

**EXAMINING WHETHER COMBINING GUARDS
AND OTHER EMPLOYEES IN BARGAINING
UNITS WOULD WEAKEN NATIONAL SECURITY**

HEARING

BEFORE THE
SUBCOMMITTEE ON EMPLOYER-EMPLOYEE
RELATIONS

OF THE
COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES

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EXAMINING WHETHER COMBINING GUARDS AND OTHER EMPLOYEES IN BARGAINING UNITS WOULD WEAKEN NATIONAL SECURITY

**Thursday, September 28, 2006
U.S. House of Representatives
Subcommittee on Employer-Employee Relations
Committee on Education and the Workforce
Washington, DC**

The subcommittee met, pursuant to call, at 10:33 a.m., in room 2175, Rayburn House Office Building, Hon. Sam Johnson [chairman of the subcommittee] presiding.

Present: Representatives Johnson, Kline, McKeon, Foxx, Andrews, Payne, McCarthy, and Tierney.

Staff present: Steve Forde, Communications Director; Ed Gilroy, Director of Workforce Policy; Rob Gregg, Legislative Assistant; Jessica Gross, Press Assistant; Kai Hirabayashi, Professional Staff Member; Richard Hoar, Professional Staff Member; Jim Paretto, Workforce Policy Counsel; Deborah L. Emerson Samantar, Committee Clerk/Intern Coordinator; Loren Sweatt, Professional Staff Member; Jody Calamine, Counsel, Employer and Employee Relations; Tylease Fitzgerald, Legislative Assistant/Labor; Rachel Racusen, Press Assistant; Marsha Renwanz, Legislative Associate/Labor; Michele Varnhagen, Special Labor and Benefits Counsel; and Mark Zuckerman, Staff Director/General Counsel.

Chairman JOHNSON [presiding]. A quorum being present, the Subcommittee on Employer-Employee Relations of the Committee on Education and Workforce will come to order.

Thank you all for being here this morning. We appreciate it.

We are here this morning to look into an issue that may seem narrow in scope but raises broad implications both for Federal labor law and, as we will hear from our witnesses, potentially for national security. The question is whether employees who provide critical security and protective services for employers can or should be included in the same union as non-guard employees.

Why is this important? Well, the law has long recognized a simple fact that most of us would agree is common sense. In a crisis, an employer needs to know that those employees who he pays to protect facilities, property and other employees have an undivided loyalty to maintaining safety and security.

And when we are talking about guards who are providing security and protective services for employers and sites that are vital to homeland and security, the issue is all the more critical.

In the post-9/11 world, we cannot risk the potential for a lapse in security that could have disastrous consequences, and that is just dangerous.

It is clear on its face that the National Labor Relations Act generally disfavors guards and non-guard employees from being included in the same union or bargaining unit.

In fact, Section 9(b)(3) of the act makes clear that the NLRB will not require any employer to recognize a mixed unit of guards and non-guards and will not certify a bargaining unit that does.

This provision of the act, known as the guard exemption, has been the law for more than 50 years. However, the law does not absolutely prohibit these sorts of unions. Under the act, if an employer voluntarily chooses to recognize and bargain with a union that includes guards and non-guards, it is free to do so.

The question before us is whether allowing for that choice continues to make sense. And if it does, how do we ensure that an employer's voluntary choice is, in fact, voluntary and based on legitimate needs and security concerns, not outside pressure or other agendas?

In recent years, we have heard arguments from both sides. We have seen legislation proposed that would completely eliminate the guard exemption. And we have heard from others who argue that even voluntary recognition should not be allowed.

Finally, we have seen an increasing trend in unions that represent a broad spectrum of employees pressing employers to recognize them as representatives of the guards.

This morning we are going to hear from a broad range of witnesses, legal experts, representatives of employees and security employers who will shed light on the questions these issues raise and give us guidance as to whether and how we need to address these matters going forward.

I welcome all of you and look forward to this morning's hearing.

I will now yield to the distinguished ranking minority member of the subcommittee, Mr. Andrews, for whatever opening statement you care to make.

Prepared Statement of Hon. Sam Johnson, Chairman, Subcommittee on Employer-Employee Relations, Committee on Education and the Workforce

Good morning, and welcome.

We are here this morning to look at an issue that may seem narrow in scope, but raises broad implications, both for federal labor law and, as we will hear from our witnesses, potentially for national security.

The question is whether employees who provide critical security and protective services for employers can or should be included in the same union as non-guard employees.

Why is this important? Well, the law has long recognized a simple fact that most of us would agree is common sense:

In a crisis, an employer needs to know that those employees who he pays to protect facilities, property, and other employees, have an undivided loyalty to maintaining safety and security.

And when we are talking about guards who are providing security and protective services for employers and sites that are vital to homeland security the issue is all the more critical.

In the post 9/11 world, we cannot risk the potential for a lapse in security that could have disastrous consequences. That's just dangerous.

It is clear on its face that the national labor relations act generally disfavors guards and non-guard employees from being included in the same union or bargaining unit.

In fact, section 9(b)(3) of the act makes clear that the NLRB will not require any employer to recognize a “mixed” unit of guards and non-guards, and will not certify a bargaining unit that does. This provision of the act, known as the “guard exemption” has been the law for more than fifty years.

However, the law does not absolutely prohibit these sorts of unions.

Under the act, if an employer voluntarily chooses to recognize and bargain with a union that includes guards and non-guards, it is free to do so.

The question before us is whether allowing for that “choice” continues to make sense. And if it does, how do we ensure that an employer’s “voluntary” choice is in fact voluntary, and based on legitimate needs and security concerns—not outside pressure or other agendas.

In recent years, we’ve heard arguments from both sides. We’ve seen legislation proposed that would completely eliminate the “guard exemption,” and we’ve heard from others who argue that even voluntary recognition should not be allowed.

Finally, we’ve seen an increasing trend in unions that represent a broad spectrum of employees pressing employers to recognize them as representatives of guards.

This morning, we will hear from a broad range of witnesses—legal experts, representatives of employees, and security employers—who will shed light on the questions these issues raise, and give us guidance as to whether and how we need to address these matters going forward. I welcome all of them, and look forward to this morning’s hearing.

Mr. ANDREWS. Thank you, Mr. Chairman.

Good morning, colleagues and ladies and gentlemen. This hearing rests on two rather curious premises, as far as I am concerned.

The first curious premise is that we should be doubtful or even suspicious of agreements voluntarily reached between employers and employees that would permit a mixed guard union to represent employees for a given employer.

I will say this again. The National Labor Relations Act already says that unless the employer agrees, a bargaining unit may not include both guards and non-guards, so by definition the only circumstance where we have a collective bargaining organization that includes security personnel and other workers is where the employer has agreed to do so.

I think one of the primary premises of labor law in this country is that we recognize free choice by workers and by employers. And I find it a bit odd that we are questioning that free choice in this narrow circumstance.

Second, there is an implicit premise in this hearing that somehow there is a jeopardy for national security in cases where you may have a mixed bargaining unit of guard and non-guard personnel.

Although I am sure it is not the chairman’s intention, I frankly find the premise to be a little offensive to even talk about, that somehow the notion that people who are collectively bargaining and organized are a greater risk to national security than those who are not.

I think, frankly, the recent record of tragedy in this country would indicate otherwise. Every firefighter, every police officer who responded to the tragedy at the World Trade Center on September 11th, 2001 was unionized—all of them.

And I don’t think there are many Americans who would take the position that they were in some way impeded or restricted from doing their jobs to protect the country and protect the people who were at risk that day because they were a member of a collective bargaining organization.

So when we are talking about changing the law, there is a burden of proof, in my mind, on those who wish to change the law.

And for those who would take the position that we should disrupt the present law, which recognizes the voluntary free choice of employers to recognize a union that mixes guard and non-guard personnel, I think that is a burden that has to be overcome by those who would advocate for that position.

And then second, if the justification for changing the law is that the national security somehow requires us to do so, I think it is also incumbent upon those who would make that argument to tell us exactly how and what evidence there is for that proposition.

The framers of the 1947 Taft-Hartley amendment thought through this problem, and they understood that there are circumstances where divided loyalty between being in a union that may be on strike, for example, and protecting the property interests of the employer during the strike may create some issues, may create some problems.

So they specifically said in 1947 that you can't have the possibility of that situation unless the employer agrees to it. And again, I am curious as to why it is even an issue that we should doubt that decision that employers have voluntarily made.

In cases where we should doubt it, to the extent that it is tied to national security, I think there is a record that I would like to see, because I don't think it exists at this point.

So I look forward to hearing from the witnesses, but I think that those who would advocate for a change in the law have a burden of proof to meet.

Thank you, Mr. Chairman.

Chairman JOHNSON. You know, Mr. Andrews, I wouldn't disagree with you that the guys in New York did a super job. And nobody is accusing unionization of being wrong. I am not, anyway.

The problem exists that when you mix those two and they are not recognized under law, you know, sometimes it causes some difficulties, I believe. And I thank you, Mr. Andrews.

He is a good patriot and I appreciate and welcome your comments.

I welcome our witnesses and look forward to their testimony today. We have a distinguished panel of witnesses before us. And I thank you all for coming today. I will identify them, and then we will allow you all to speak.

Mr. William Schurgin is a partner in the law firm of Seyfarth Shaw. Mr. Schurgin has a broad-based labor and employment law practice and has been involved in the representation of employers in a variety of industries throughout the United States.

Mr. David Hickey is the international president of the Security, Police and Fire Professionals of America, the nation's oldest and largest guard union. SPFFA represents over 27,000 security police professionals across North America.

Ms. Janet Boston works as an organizer for the Service Employees International Union helping private security officers and other service workers unite to form a union.

Retired General David Foley is the president of Wackenhut Services. WSI was formed as a subsidiary serving high-security U.S.

Government customers and generally involving prison environments.

We thank you all for being here.

Before you begin your testimony, I would indicate that we will be asking questions after the entire panel has testified. In addition, Committee Rule 2 imposes a 5-minute limit on all questions.

And I forgot to say, if anybody cares on this panel to submit a written statement for the record, you are open to do that.

Finally, I want to make clear—oh, wait, there is—you all saw those lights working for us. I don't know if you realize what they are. It is a 5-minute limit on the speeches. If you would try to close down when you see the red light come on, we would appreciate it. You will get a yellow at 1 minute.

Finally, I want to make clear the question before us today is not whether security guards should be allowed to join a union. No one would suggest they shouldn't. The question is what sort of union is appropriate for these critical security employees.

And now I will recognize the first witness. You may begin, sir.

STATEMENT OF WILLIAM P. SCHURGIN, PARTNER, SEYFARTH SHAW LLP, ON BEHALF OF THE U.S. CHAMBER OF COMMERCE

Mr. SCHURGIN. Mr. Chairman and distinguished members of the committee, thank you for inviting me here today to discuss the propriety of allowing unions which represent non-guard bargaining units to also represent guards under the National Labor Relations Act.

By way of background, Section 9(b)(3) of the National Labor Relations Act expressly provides that a labor union cannot be certified as the representative of guards if that labor union also admits non-guard employees to its membership.

In other words, the only type of union the National Labor Relations Board can certify as the collective bargaining representative of guards is a labor union which only represents guards.

This statutory prohibition is based on the principle that guards must have undivided loyalty toward their employers and that employers must have complete confidence in their guards' willingness, in the employer's interest, to monitor activities and enforce rules against other employees.

For example, in the event of a strike or a labor dispute, if striking employees engage in picket line violence or property acts of destruction, the employer must be able to rely on those guards to protect its non-striking workers and its property.

The role guards play today in maintaining a safe and secure workforce and workplace is greater than ever. Guards are an employer's first line of defense in protecting other workers from workplace violence.

Guards are entrusted with enforcing important safety and conduct rules against other employees, including rules relating to theft, use or sale of illegal drugs and possession of weapons.

In such cases, guards are often the employer's primary witness in labor arbitrations challenging the termination of employees who engage in such misconduct.

Private guards today also protect critical facilities such as nuclear power plants, chemical factories and defense installations

from outside threats as well as from potential sabotage by employees and other workers.

In these facilities, guards monitor loading docks where union-represented employees deliver supplies and pick up products. Guards are responsible for monitoring and patrolling defense contractor construction sites where members of many non-guard unions work for a variety of different employers on the site.

Given the critical safety and security role that guards play today, a serious concern over potential divided loyalty arises when guards may be forced to choose between supporting a fellow union member and reporting suspicious activity to their employer.

It is important to recognize, as has been said earlier, that no one here today is challenging guards' right to unionize. There are a number of unions which have represented guards and only guards for many years. These guard unions regularly negotiate with employers over wages, benefits and training for the guards they represent.

Instead, the issue today is whether mixed guard unions, which are unions that represent both guards and non-guards, should be allowed to use pressure tactics to force security guard employers to waive their rights under Section 9(b)(3) of the act.

The ultimate goal of these pressure tactics is for the employer to enter into what is called a card-check neutrality agreement. A card-check neutrality agreement requires the employer to remain neutral and often silent during union organizing and provides that the employer will recognize the union once a majority of the employee's guards have signed union authorization cards.

Over the past 30 years, certain mixed guard unions repeatedly have been found to have violated the National Labor Relations Act by threatening unlawful picketing and secondary boycotts against employers.

Today some of those same unions have modified their approach by resorting to what we call a corporate campaign.

A corporate campaign is an organized assault by a union designed to undermine a company's relationship with its key stakeholders through a variety of external tactics, including attacks on the company's products, services, customers, suppliers and stakeholders.

The use of a corporate campaign in the context of guards is particularly disturbing. With respect to guards, the National Labor Relations Act specifically provides that a mixed guard union cannot be certified as the collective bargaining representative of guards.

Instead, under current interpretations, the only way that a mixed guard union can represent guards is to ask that the security guard employer waive its Section 9(b)(3) rights and voluntarily recognize that union.

Mixed guard unions take the position that using corporate campaign tactics to force employers to agree to card-check neutrality constitutes a form of voluntary recognition. This is a very difficult proposition to accept where the very purpose of a corporate campaign is to force an employer into an agreement.

In the case of mixed guard unions, the use of corporate campaigns to pressure a security guard employer to waive the right to

have its employees represented by a union which only represents guards is very troublesome.

The use of corporate campaigns are attempting to pressure a security guard employer to waive these rights, and that flies directly in the face of the spirit of the act. In 1947, when Section 9(b)(3) was enacted, corporate campaigns were not part of union organizing strategy.

The purpose of Section 9(b)(3) was to assure that an employer could have the full confidence and loyalty of its guards to maintain a safe and secure workplace without risk of divided loyalty.

In today's world, these principles are even more important. The use of corporate campaign tactics by mixed guard unions places employers in a position where they are forced to compromise their confidence in the loyalty of their guards in protecting the workplace.

Thank you.

[The prepared statement of Mr. Schurgin follows:]

**Prepared Statement of William P. Schurgin, Partner, Seyfarth Shaw LLP,
on Behalf of the United States Chamber of Commerce**

Introduction

Good morning Mr. Chairman and members of the Subcommittee. I am pleased and honored to be here today to testify regarding the propriety of allowing unions which represent non-guard bargaining units to also represent guards under the National Labor Relations Act. Thank you for your invitation.

By way of introduction, I am a partner with the national law firm of Seyfarth Shaw LLP. I currently serve as a member of Steering Committee of the firm's Labor and Employment Department and I have previously served as the co-chair of the Labor and Employment Department's Traditional Labor Practice Group. In addition to my private law practice which has focused on traditional labor issues for over twenty five years, I have also regularly taught labor and employment law courses to law students at DePaul University and Loyola University in Chicago, Illinois.

I am testifying today on behalf of the United States Chamber of Commerce. The Chamber is the world's largest business federation representing more the three million businesses and organizations of every size, sector, and region. My firm serves on the Chamber's Labor Relations Committee, as well as its subcommittee focused on traditional labor issues.

Today, we are here to discuss the use of corporate campaign tactics by unions who wish to represent guards as well as non-guard employees. These labor organizations are typically referred to as mixed-guard unions. The National Labor Relations Act ("NLRA" or "Act") has long contained a prohibition against certifying such mixed-guard unions as the bargaining representative of guards. Section 9 (b)(3) of the NLRA expressly provides that "a labor organization shall not be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership or is affiliated directly or indirectly with an organization who admits to membership employees other than guards." 29 U.S.C. § 159 (b)(3). Accordingly, under the plain language of the NLRA, mixed-guard unions cannot seek National Labor Relations Board ("NLRB") approval to represent guards. In fact, the only way that mixed-guard unions can legally represent guards is to ask an employer to waive its Section 9(b)(3) rights and "voluntarily" recognize the union.

Over the years some mixed-guard unions have used threats and secondary boycotts to attempt to force employers to recognize them as the representative of guards without using the NLRB election process. In many cases, the NLRB and the courts have ordered these mixed-guard unions to cease and desist from using such illegal tactics. Today, these same unions are increasingly relying on corporate campaign tactics to achieve this same goal. The purpose of a corporate campaign is to force a targeted employer to give up its right to free speech and its employees' right to a secret ballot election by pressuring the employer to agree to card-check recognition, a process in which employees select a union by simply signing authorization cards. This approach is labeled as "voluntary recognition" by these unions—although recognition is often anything but voluntary.

Respect for employees' free choice to unionize, or not to unionize, is a fundamental principle upon which our labor relations system is based. Over 50 years ago Con-

gress established a system to govern labor-management relations. An integral part of that system is the right of employees to make a free and democratic choice regarding union representation. Secret ballot elections supervised by the National Labor Relations Board are, without question, the gold standard for protecting employee free choice. Unfortunately, certain labor unions have abandoned secret ballot elections and instead rely on corporate campaign tactics to organize employers. These corporate campaign¹ activities aim to limit employee free choice and stifle any opposition from management through a process known as card-check/neutrality.

The Chamber strongly supports the important policy considerations underlying the prohibition contained in Section 9 (b)(3). Congress included the prohibition in Section 9 (b)(3) of the Act because of its concern over the risks of mixed loyalties if guards were represented by unions that also represent other employees. In this regard, employers must be completely confident in their guards' allegiance to their interests when carrying out their important safety and rule enforcement duties regardless of their relationship with or affiliation with other employees. Permitting the same union to represent both guards and non-guards severely limits an employer's capability to utilize guards to monitor, witness, and enforce employer rules. The efforts of certain unions to organize guards through forced card-check recognition severely compromises the guards' ability to serve these critical roles for their employers. Therefore, the Chamber urges the Subcommittee to carefully consider these issues in the context of the language and intent of Section 9 (b)(3) of the Act.

Current Law

Under the NLRA, a labor organization may be certified as the legal representative of a group of guards, so long as the labor organization representing the guards does not represent other types of employees. As noted above, Section 9 (b)(3) prohibits the National Labor Relations Board from certifying a labor organization "as the representative of employees in a bargaining unit of guards if such an organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards." Congress defines guards as employees who "protect property of the employer" and/or "to protect the safety of premises." See *NLRB v. Kentucky River Comm. Care, Inc.*, 532 U.S. 706 (2001).

To understand the significance of this limitation, we should first consider the principle that guards represent employer interests against all others including other employees. For example, if striking employees engage in picket line violence on the employer's property, the employer must maintain the right to utilize its guards to protect non-strikers and employer property. Recognizing the inherent risk of divided loyalty among guards who were represented by unions that also represented non-guard employees, Congress, in passing the Taft-Hartley Amendments in 1947, granted guards the right to unionize with a very clear limitation. As noted in the Conference Committee Report in discussing the intent of Section 9(b)(3):

We accepted a provision regarding plant guards. We had exempted foremen in the Senate bill, but we had not exempted plant guards. The House bill exempted plant guards, and also time study employees, and personnel forces. We did not accept any of those provisions, except that as to plant guards we provided that they could have the protections of the Wagner Act only if they had a union separate and apart from the union and general employees.²

Congress required the separation between the guard and non-guard unions in order "to insure to an employer that during a strike or labor unrest among other employees, [the employer] would have a core of plant protection employees who could enforce the employer's rules for protection of [its] property and persons without being confronted with a division of loyalty between the employer and dissatisfied fellow union members." *McDonnell Aircraft Corp.*, 109 N.L.R.B. 967, 969 (1954).

Policy Supporting Section 9 (b)(3)

The concerns that motivated Congress to expressly separate guard units from all other unions continue to hold true for employers today. Although the incidents of picket line violence may have decreased, unfortunately they have not disappeared;

¹ Jarol B. Manheim, Professor of Media and Public Affairs and of Political Science, The George Washington University, Washington D.C., and an expert in the field of corporate campaigns, defines a corporate campaign as "an organized assault by a union or some other group, literally a form of warfare designed to undermine a company's relationships with its key stakeholders and to define that company as an outlaw that must be stopped before it does further damage to our society." *Compulsory Union Dues and Corporate Campaigns*, Testimony before the U.S. House of Representatives, Committee on Education on the Workforce, Subcommittee on Workforce Protections, 107th Congress, p. 6 (July 23, 2002).

² 93 Cong. Rec. 6603, 6656 (1947).

leaving guard loyalty toward their employer in the context of a labor dispute critical for employers needing to protect non-union personnel and property. Today guards also play a significant role in policing employee behavior. Given the well-documented cases of employee violence in the workplace, guards play an increasing important role in maintaining workplace peace and responding to workplace threats. Guards are often responsible for observing and investigating employee misconduct, such as theft, drug use, and violence. Indeed, if an employer terminates an employee, the termination decision is not infrequently based on information gathered by a guard. As such, guards are often called on to testify as management witnesses in arbitrations and court proceedings related to employee misconduct and discipline.

We must also be mindful, in this post-9/11 world, of the increasing role guards play in many safety-sensitive industries. Private guards protect nuclear power plants, chemical factories, and defense contractor operations. While guards protect these critical facilities from outside threats, unfortunately it is also true that they must protect them from possible sabotage by employees. With such important security roles resting on the shoulders of guards, we cannot place guards in a situation in which they are forced to choose between supporting a fellow union member and reporting suspicious activity to their employer.

All of these important roles that guards serve would be severely compromised if they felt a divided loyalty between their employer and their union. "Congress drafted this provision 'to minimize the danger of divided loyalty that arises when a guard is called upon to enforce the rules of his employer against a fellow union member.'" *Drivers, Chauffeurs, Warehousemen and Helpers, Local No. 71 v. NLRB*, 553 F.2d 1368, 1373 (D.C. Cir. 1977). If mixed unions succeed in their efforts to force employers to allow them to represent both guards and non-guards, employers will no longer have "a core of faithful employees" that it can count on to represent its interests when other employees violate rules. *Wells Fargo Armored Serv. Corp.*, 270 N.L.R.B. 787, 789 (1984). One can only imagine the potential strain placed on plant guards and their employers when the guards are forced to choose between carrying out the duties of their job by supporting their employer or preventing a fellow union member from losing his or her job.

In short, Section 9(b)(3) of the Act bars the NLRB from certifying any mixed-guard union because of the potential conflict of interest for the guard union members between loyalty to the employer and loyalty to the non-guard union. Recent efforts by certain unions, to organize guard units through corporate campaign tactics is an effort to circumvent this important prohibition by evading the Act's jurisdiction all together.

Union's Corporate Campaign Activity

Labor organizations devote significant resources today to obtain agreements from employers under which they become the bargaining representative of a group of employees without undergoing an NLRB-supervised, secret-ballot election. These agreements, referred to as "neutrality" and/or "card-check" agreements, come in a variety of forms, with the unifying factor being that virtually every agreement deprives employees of the right to make a decision about the union with the protection of a voting booth and a secret ballot. In addition, these agreements also often include provisions designed to assist the union, such as:

- An agreement to provide the union with a list of the names and addresses of employees in the potential unit;
- An agreement to allow union representatives access to the employer's facility;
- An agreement prohibiting the employer from communicating with employees about the union;
- An agreement regarding the dispute resolution system for collective bargaining negotiations; and
- An agreement to extend the card-check/neutrality agreement to other locations or facilities.

Labor organizations have resorted to forcing employers to agree to these one-sided agreements because of the steady decline in union membership in the private sector workforce in the United States. While there are varying causes for this decline (unions represent only about 8% of the private sector workforce), including more robust state and federal employment laws, significant improvements in the benefits and working conditions provided to employees, and the failure of organized labor to offer a message that appeals to workers, unions blame the NLRB election process as one of the main causes. Arguing that the NLRB's process is slow and ineffective, unions purport to offer employers and employees a faster solution—that being a card-check/neutrality agreement, which eliminates the NLRB's involvement, as well as all the protections associated with the NLRB's election processes.

So why are unions dissatisfied with the NLRB's election processes, especially when they are winning approximately 50% of NLRB secret ballot elections involving newly organized units—a statistic that has remained largely unchanged for the last thirty (30) years? See NLRB Election Report; 6 Months Summary—October, 2005 through March, 2006 and Cases Closed March, 2006, at p. 20 (April 12, 2006). While unions argue that the blame lies with the NLRB and allegedly improper employer tactics, the more likely reason is the overwhelming success unions experience organizing employees once they obtain a card-check/neutrality agreement. Once unions strip away employees' fundamental right, to vote in an NLRB secret ballot election and eliminate an employers' fundamental right to engage in free speech concerning union representation, the unions' ability to organize new members is greatly enhanced.

To achieve this holy grail of organizing, unions frequently engage in corporate campaigns. Unions engage in corporate campaigns by exerting pressure on targeted employers through a variety of tactics using largely external leverage, not employee support. This leverage can take a many of forms including attacks on the targeted company's products, services, customers, suppliers, stakeholders, and regulatory actions. Unions challenge targeted employers' efforts to seek favorable legislation, to secure necessary permits, to obtain outside capital, and to expand facilities. This political and/or regulatory pressure often is coupled with a negative public relations campaign. Corporate campaigns are intended to leave an employer's customers questioning the quality of the company's products and an employer's stakeholders questioning the quality of the company's management. Under the pressure of such forces, targeted employers are often left no choice but to "give in" to the Union's demands, sign a card-check/neutrality agreement, and give away their free speech along with employees' free choice.

Although card-checks may offer an adequate view of employee sentiment when it comes to the threshold question of whether the NLRB should hold an election, they are inadequate in truly determining employee sentiment regarding unionization and therefore, not an adequate substitute for the secret ballot election. The card check process is inferior because unions can use a variety of tactics to obtain cards, such as lying, coercion, misrepresentation and intimidation (largely without legal challenge)—none of which are allowed in the ballot booth.

This method of organizing, which focuses on first forcing the leadership of the company to surrender, and only later appealing to the desires of the employees, flies in the face of the system of organizing designed by Congress in the National Labor Relations Act. In a corporate campaign, the employees themselves are often forgotten as unions recognize that once card-check neutrality is achieved their success in organizing is virtually guaranteed. This certainly does not seem cogent with the intent and spirit of Section 7 of the Act, which focuses on employees' rights to freely exercise a choice to support or not to support a union.

Corporate Campaigns and Guard Units

While organized labor's efforts to ignore the NLRA's secret ballot elections process raise serious legal and policy questions, certain mixed-guard unions are now advocating using corporate campaign tactics and card-check/neutrality agreements to circumvent the prohibitions in Section 9 (b)(3) of the Act. A mixed-guard union's use of corporate campaign tactics to secure representational status over guard employees without a Board-conducted election blatantly disregards the important policy considerations underlying the Taft-Hartley Amendments.

Such an approach is not new for certain unions. In the 1970's, the National Labor Relations Board concluded that the Service Employee International Union ("SEIU") engaged in serious unfair labor practices by using unlawful boycotts and other pressure tactics to attempt to organize guards. See, e.g., *Wackenhut Corp.*, 287 N.L.R.B. 374 (1987) (union found guilty of violating sections 8 (b)(1)(A), 8 (b)(4)(ii)(B) and 8 (b)(7)(C) of the Act in an effort to force a security guard firm to recognize it); *General Service Union Local No. 73*, affiliated with Service Employees International Union, AFL-CIO, 230 N.L.R.B. 351 (1977) (union found guilty of violating sections 8 (b)(7)(C) and 8 (b)(4)(i) and (ii) (B) in an effort to force a security guard firm to recognize it). Although mixed-guard unions may have found a loophole in Section 9(b)(3) that they can exploit through corporate campaigns and card-check neutrality agreements this is no less offensive to the policy behind 9(b)(3) than these earlier infractions.

It should also be emphasized that from a practical standpoint, there is simply no need for mixed-guard unions to represent guards. Organized labor has long recognized union jurisdictional rights and limitations. A union's right to organize and to represent employees is often defined by geography, industry and/or job classifications of workers. With respect to guards, there are a number of well-established

unions that have organized and represented this class of workers for many years. Ironically, these traditional guard unions have, in our experience, largely supported the NLRB secret ballot election process as the preferred approach to exercising employee free choice.

Thus, the issue today is not whether guards are currently represented by qualified unions. The issue is also not whether there are experienced guard unions that will continue to organize guards in the future. The answer to both of these questions is a resounding yes. The only question before you today is whether a non-guard union should be allowed to represent guards through the use of card-check/neutrality agreements which are often achieved through corporate campaign tactics. The intent of the Taft-Hartley Amendments and nearly 60 years of legal authority upholding the important distinction between guards and the employees that they are entrusted to enforce rules against call for a resounding NO to that question.

Conclusion

In conclusion, the Chamber has serious concerns about the efforts of certain mixed-guard unions to undermine Congress' intent and purpose in enacting Section 9 (b)(3) of the National Labor relations Act. Mr. Chairman and members of the Committee, thank you for the opportunity to share the Chamber's concern regarding this important issue. Please do not hesitate to contact me or the Chamber's Labor, Immigration, and Employee Benefits Division if we can be of further assistance in this matter.

Chairman JOHNSON. Thank you, sir.
Mr. Hickey, you are recognized.

STATEMENT OF DAVID L. HICKEY, INTERNATIONAL PRESIDENT, INTERNATIONAL UNION, SECURITY, POLICE, AND FIRE PROFESSIONALS OF AMERICA (SPFPA)

Mr. HICKEY. Thank you, Mr. Chairman, and good morning.

I am David L. Hickey, president of the International Union, Security, Police and Fire Professionals of America, SPFPA. Let me declare at the outset that I am not a witness for either political party or any party. Equally, I am not here to support or oppose the views of any employer or any other labor organization.

My duty and sole role is as an advocate for the interests of the SPFPA and its members. The views I express have been held by our union since its founding in 1948.

Appearing with me today is Gordon A. Gregory, our longtime general counsel who has testified before both Senate and House subcommittees on today's subject.

The SPFPA is the country's largest security union devoted to the exclusive representation of security personnel, statutory guards. By virtue of Section 9(b)(3) we are an independent, unaffiliated union.

We have a proud tradition of representing security officers wherever employed throughout the United States and Puerto Rico. We have been in the forefront of improving and advancing the interests of security officers and the security profession.

Our accomplishments include the landmark Burns successor case in the U.S. Supreme Court, the McNamara O'Hara Service Contract Act and the raising of professional security standards.

In terms of national security, our members have been and are employed at the Kennedy Space Center, Cape Canaveral; Patrick Air Force Base; Houston Space Center, DOE facilities such as Oak Ridge, Savannah River, Idaho National Lab; nuclear power plants; entertainment venues such as Disney World, Universal Studios and the Spectrum; Federal courts, military forts, King's Bay Submarine Base, Federal buildings and reservations, and many, many more.

Since 9/11 the demands on security professionals have increased dramatically with respect to job duties, hours, training and physical fitness.

There has been increasing specialization of private security by the development of rapid response teams, hostage teams, canine units and others. Our members are first responders and must make immediate decisions regarding threat assessment and response.

It is noteworthy that the subject of this committee's inquiry is examining whether combining guards and other employees in bargaining units would weaken national security without mention of Section 9(b)(3), which has for 59 years declared that guards and non-guards should not be in the same unit.

Indeed, prior to 1993 the NLRB placed guards in separate units because of their unique duties and responsibilities.

The divided loyalty rationale for separate guard units continues and is more paramount because of increased levels of security. While there is a lack of studies due to the long history of guard-only units, it is clear that a mixed unit is incompatible with national security or any form of security.

Effective security depends upon focus and dedication which should not be impaired by the added stressor of enforcing rules and regulations against union brothers and sisters.

Now, my opposition to combined units of guards and non-guards is not based upon consideration of loyalty or patriotism. American workers are concerned with national security and through their unions enhance such security.

But there is a substantial and significant difference between those who respect national security and those who are responsible to enforce it. The ability of those who enforce should not be diminished by changing over 60 years of established labor law.

I respectfully suggest that this committee's inquiry conclude with a finding that there are no compelling reasons to amend Section 9(b)(3) or board precedent.

I thank you for the opportunity to appear and state the position of the international union, SPFPA. Thank you.

[The prepared statement of Mr. Hickey follows:]

Prepared Statement of David L. Hickey, President, International Union, Security, Police and Fire Professionals of America (SPFPA)

As President of the International Union, Security, Police and Fire Professionals of America (SPFPA), I vigorously oppose any amendment to Section 9(b)(3) of the National Labor Relations Act, as amended, which would combine statutory "guards" with non-guards in a common bargaining unit. Such a change is antithetical to the original legislative philosophy and intent of the Act, and its promotion of industrial stability. Moreover, it would be inimical with national security.

The International Union, United Plant Guard Workers of America (UPGWA) was founded on February 17, 1948 and has become the world's largest Union devoted to the representation of guards and security employees exclusively.¹ Our Union represents industrial and agency guards in every major industry and at numerous Government installations throughout the United States and Puerto Rico. Throughout the years we have negotiated successive National Bargaining Agreements with General Motors Corporation, DaimlerChrysler Corporation, Ford Motor Company and other major corporations. Many of our collective bargaining units are at Government facilities, such as the Kennedy Space Center, Savannah River, Oak Ridge, Idaho Na-

¹The Union's name was changed to International Union, Security, Police and Fire Professionals of America (SPFPA) in May 2000.

tional Lab, King's Bay Submarine Base, military forts, nuclear power plants and with defense contractors such as Boeing.

Our Union did not seek the initial enactment of Section 9(b)(3). We were the product of it. Prior to 1947, the core of what was to become the UPGWA was known as Local 114, UAW. In 1947 the labor movement did not seem unduly disturbed about Section 9(b)(3). Industrial guards were regarded as representatives of management. Indeed, the original House Bill would have included guards within the definition of "supervisor." The compromise, of course, was to place guards in separate bargaining units and separate guard unions. Thus we were left to our own devices and resources to form an international guard union.

Despite our statutory exile from the house of labor, the UPGWA/SPFPA has always enjoyed a close relationship with leaders of the AFL-CIO and its affiliated unions. Although we must presently avoid any affiliation, directly or indirectly, with an organization which admits to membership employees other than guards, our Union has achieved international union status and has accepted and performed a significant role in the labor movement.

Since its enactment in 1947, the philosophy of Section 9(b)(3) has proven workable and effective. Guard employees have unique and special hours and other terms and conditions of employment. The National Labor Relations Act has, of course, recognized the special community of interest enjoyed by guard employees and has, therefore, directed that guards be placed in separate bargaining units. This rule has resulted in a stability and continuity of labor relations not always enjoyed by other bargaining units of employees. For example, guard units are not subject to NLRB petitions for craft or departmental severance. The maintenance of guards in separate bargaining units and unions has avoided conflicts of interest between the enforcement of plant rules and the obligations of union membership. Equally, conflicts of interest have been avoided in strikes and other labor disputes while preserving the rights of the respective parties. Since industrial crime and terrorism is on the increase, the continued need for a separate identity of guard employees is even more apparent.

The Congress has rejected prior efforts to amend 9(b)(3) to combine guards and non-guards or to permit guard representation by non-guard unions.

In 1978 our Union successfully opposed the so-called "Riegle Amendment" to S. 1883 which would have limited 9(b)(3) to guard agencies only. Directly employed or in-house guards would lose the protection of 9(b)(3).

In 1983-1984, we opposed H.R. 2197 and 2198 which would have permitted non-guard unions to represent guards at employers and locations where it did not represent non-guards.

Similarly, in 1986, we opposed S. 1018 which would amend 9(b)(3) to apply to "plant guards" only. Agency guards would not be subject to 9(b)(3), and thus the NLRB could certify a non-guard union to represent a mixed bargaining unit.

It is evident that committees of both the Senate and House have recognized the adage that "If it ain't broke, don't fix it." Section 9(b)(3) is not broken and will continue to serve its purpose of providing statutory "guards" with the right to representation while avoiding the serious problem of divided loyalties.

The SPFPA represents statutory guards at numerous military, space and defense installations throughout the country. The security personnel at such facilities are not traditional "plant guards." They are highly trained, dedicated and motivated professionals who are prepared to meet the current challenges of terrorism, sabotage and treason. Mixed bargaining units would destroy the stability and community of interest created by Section 9(b)(3) by placing statutory guards in heterogeneous units with representation by non-guard unions.

In 1984 the NLRB placed its guard representation policy in harmony with the legislative intent of Section 9(b)(3). In *University of Chicago*, 272 NLRB No. 126, 117 LRRM 1377 (1984), it was held that a guard/non-guard union is barred from intervening in an election for a guard unit. The Board stated in relevant part as follows:

"As enacted, Section 9(b)(3) applies both to mixed units of guards and other employees and to guard/non-guard unions. The statute renders the former inherently inappropriate, and proscribes the Board from certifying the latter. Although the provision addresses two different situations, we conclude that, given the purpose underlying its enactment, Section 9(b)(3) was intended to achieve a uniform result. Thus, we find no basis for distinguishing between the degree of exclusion to be applied to a mixed unit and that to be applied to a guard/non-guard union. Such a distinction is at odds with the fundamental purpose of Section 9(b)(3) inasmuch as it permits a guard/non-guard union to attain indirectly that which it cannot attain directly, that is, a place on the ballot in the Board conducted election. Moreover, it can scarcely be gainsaid that placing a guard/non-guard union on the ballot contributes to a result antithetical to the legislative history of Section 9(b)(3). Clearly, this

practice creates the false impression that the guard/non-guard union is equally as capable of securing the protections of the Act as other candidates on the same ballot. As we noted in *Brink's*, supra, we shall not, indeed cannot, sanction a practice which utilizes Board processes in furtherance of an end which a specific provision of the Act was plainly intended to discourage.

Thus, we construe Section 9(b)(3) not only to bar the formality of certification, but also to preclude a disqualified labor organization from taking advantage of the Board's election processes, including the privilege of being placed on the ballot as an intervenor with an accompanying certification of the arithmetical results. Therefore, we hereby over rule *Burns II*, *Bally's Park Place*, and their progeny." (117LRRM 1379-1381, emphasis added).

Also, to the same effect is Board policy set forth in *Brink's, Inc.*, 272 NLRB No. 125, 117 LRRM 1385 (1984) and *Wells Fargo Armored Service Corp.*, 270 NLRB No. 106, 116 LRRM 1129 (1984).

Edward Miller, a former NLRB Chair, appeared before a Senate subcommittee in 1986 and urged no change in 9(b)(3) as follows:

Under the *Armored Motor Services* case, and for thirty years and more now, [the NLRB] has applied the law to all guards, including armored car guards and courier guards. This has been true under both Republican and Democratic administrations. Neither the courts nor the Congress have found the Board to be in error. * * * I know of no evidence that the various unions which do limit their membership to guards are not representing them well, effectively, and honestly. * * * Does the Congress have any solid evidence that there are a lot of guards out there seeking union representation whom the established guard unions are not trying to organize or are not interested in organizing? Or is it simply the fact that some other non-guard unions would like an opportunity to raid the guard unions? I hope it is not the latter. * * * Is this Congress really interested in furthering internal union disputes and raiding tactics? I doubt it.

In their definitive study "Guard Unions And The Problem Of Divided Loyalties" published in 1989 by the Wharton School, Industrial Research Unit, the authors stated conclusions that are timely today and applicable to this Subcommittee's inquiry as follows:

Indeed, legislation to repeal or weaken section 9(b)(3) would seem to fly in the face of the current public policy trend toward greater sensitivity to conflicts of interest involving persons who serve in positions of trust whether with respect to labor disputes, terrorism, or day-to-day security.

Congress in 1947 had no trouble seeing that serious conflict of interest problems could arise if guards could be mixed together in the same bargaining units, or represented by the same labor organizations, as nonguard employees. Guards, by definition, serve in positions of special trust. They are charged with protecting property and safety. They are the people employers depend on to prevent unauthorized entry, sabotage, and other misconduct during labor disputes or otherwise. To put such persons in positions where their loyalties could be divided between their duties to the employer and their allegiance to a union would undermine the very essence of their function.

Section 9(b)(3) is a carefully drawn safeguard against such potential conflicts of interests. It allows guards to join, assist, and form guard unions and exercise all the rights of employees under the NLRA as to collective bargaining. It simply requires that they do so in the context of separate bargaining units and through separate, independent unions. Senator Taft recognized in 1947 that the slight limitation section 9(b)(3) thus placed on guards' rights under the NLRA was "a minor one, nevertheless a reasonable one."

Nothing has happened in the forty-plus years since 9(b)(3)'s enactment to warrant a different conclusion today. The limitations placed on guards have indeed proven very minor. It has not prevented them from having effective, powerful labor unions of their own choosing. There is no indication that guards have fared any less well from a labor relations standpoint than non-guard employees. And the safeguard that section 9(b)(3) established is every bit as reasonable by today's standards as it was by 1947's. The problem of potential conflicting loyalties is certainly as real today as it was then, and the American public has, if anything, grown far less tolerant of such conflicts—or even the appearance of conflicts of interest.

The SPFPA continues to protect and advance the rights of security employees. The occupation and profession of security officers will not gain from an amendment of 9(b)(3) that would combine guards and non-guards in bargaining units.

The UPGWA/SPFPA did not sponsor or support the original 9(b)(3) in 1947. We were temporarily orphaned by it. We survived and grew however because of an ability to recognize and deal with the special problems and needs of security officers. This has been accomplished in accordance with the finest traditions of trade union-

ism and consistent with sound labor relations policy. Any amendment of 9(b)(3) would be destructive of 59 years of progress in the exclusive representation of security employees, and contrary to national security. It would detract from the mission of security officers at all levels of private security.

Contemporary security officers have become first responders with responsibilities unknown prior to 9/11. They must not be encumbered by restraints unrelated to the security function such as conflicts of interest arising from the enforcement of rules against non-guard co-workers.

National security demands a strengthening of the security profession, not a diminution of it in opposition to established federal labor policy.

This Subcommittee should recommend that there be no change in Section 9(b)(3) or NLRB precedent.

Chairman JOHNSON. Thank you for your comments, sir. You are appreciated.

Ms. Boston, you are recognized.

**STATEMENT OF JANET BOSTON, ORGANIZER, SERVICE
EMPLOYEES INTERNATIONAL UNION**

Ms. BOSTON. Good morning, Chairman Johnson, Representative Andrew and distinguished members of the subcommittee.

It is an honor for me to speak today for my union brothers and sisters. My name is Janet Boston. I worked at the World Trade Center for 25 years for many different contractors. Over the years, I have worked at almost all the jobs in the building, as a matron, an elevator operator, console operator and more.

I was a shop steward and member of SEIU Local 32BJ, which represents more than 85,000 workers in security, cleaning and other property services.

I lost my job at the World Trade Center on 9/11. Thousands of working people lost their lives on that horrible day. Sixty-two were my union brothers and sisters. Many were my friends. I was very fortunate to have taken a day off to work on the primary election.

When I heard what had happened I went back into lower Manhattan to find my friends and to help them connect with their loved ones.

I had been through an attack before. In 1993 I was working at the World Trade Center when a terrorist drove a truck into the building. Security officers were not yet members of our union and had no training. When that bomb exploded, I can tell you it was total chaos.

People did not know what to do. My co-workers and I just did what we could, helping people out of the building to safety.

Right after that, things changed. The security officers joined our union and started to get real training. We learned screening and evacuation procedures and practiced for emergencies.

Security officers knew that building inside out, and it was our union that helped make that training possible. So when 9/11 happened, we were better prepared. Nine-eleven was a terrible day. But what some people don't realize is when the planes hit our building, private and public security was ready.

And on that day, 99 percent of the people in the tower below where the planes hit got out. That day, security officers, union members properly trained through their union, helped save those lives, working right alongside police, firefighters and rescue workers.

Even workers who were off that day came to help with rescue. In fact, our sister health care union, 1199, helped with emergency evacuations.

Nobody thought about their union card that day. We all cared about our fellow workers, the people in the buildings and our city. And nobody asked if security officer were in the same union as the elevator operators or the janitors.

That is what security officers in cities all around the country are looking for. I know, because they told me their stories. They know unions will help them provide for their families, build their careers and lend dignity and respect for the work they do.

They want their job to be more professional, they want training, and they want protection from getting fired if they speak out about security problems. And they want a union that is big enough and strong enough to stand up for them. If that means joining force with janitors and nursing, that is no problem.

It makes me sad that we are still having this conversation 5 years later. Instead of asking whether security officers should be in a union or what kind of union, we should be asking why some security companies and building owners are standing in the way of security officers who want to join with other workers to improve the standards of their industry and their standards of living.

Don't you think the best way to protect our national security is to honor the memories of the union security officers who lost their lives on 9/11 doing a job they loved? They were the original first responders, proud union members trained, prepared and ready to defend the people of this great country.

Thank you.

[The prepared statement of Ms. Boston follows:]

**Prepared Statement of Janet Boston, Organizer, Service Employees
International Union**

My name is Janet Boston. I worked at the World Trade Center in New York City for 25 years. I lost my job at the World Trade Center on 9/11, my union lost 62 brothers and sisters on that horrible day. Over the years I worked almost all the jobs in the building, as a matron, elevator operator, console, and others working for the Port Authority and ABM. During that time I was a shop steward and member of my union, SEIU Local 32BJ, which represents more than 85,000 workers in security, janitorial and other property services professions.

The Service Employees International Union (SEIU) is the nation's largest union of property services workers, representing more than 50,000 private security officers and public safety personnel nationwide.

Our union lost 62 of our members on 9/11. I lost a lot of friends. I was very fortunate to have taken the day off so that I could be working on the primary election that day and was not in the building at the time of the attacks. When I heard what had happened I went back into Lower Manhattan to find my friends and help them connect with their loved ones.

In 1993 I was working at the building when a terrorist drove a truck bomb into the World Trade Center. In those days the security officers were not yet members of our union and did not have any training. When that bomb exploded I can tell you it was total chaos. People did not know what to do. My co-workers and I just did what we could, escorting people out of the building to safety.

After the 1993 attack, things changed. The security officers at the buildings joined our union and began receiving real training. We did drills, studied evacuation procedures, and practiced for emergencies. Security knew the building inside and out. And it was our union that helped make that training possible.

I know how much pride we had in being union members and in our jobs at the World Trade Center. We had respect on the job because of the union and we knew that whoever came to do that work would be well-trained and be professional and see their job as a career—because they were union.

So when 9/11 happened, we were better prepared. 9/11 was a terrible day. But what some people don't realize is, when the planes hit our buildings, private and public security was ready. Unions in New York City represented all the security personnel, police and fire who acted so bravely to save lives on that terrible day.

And on that day, according to USA Today, 99 percent of people in the towers below the floors where the planes hit, got out of the buildings. That day security officers—union members properly trained through their union—helped save those lives, working right alongside policemen, firemen, and rescue workers. Even workers who were not at work that day came to the buildings to help with the rescue. In fact, our sister health care union 1199 helped with emergency evacuations. No one thought about their union card, that day, we all cared about our fellow workers, building residents and our city.

Prior to 9/11, SEIU was speaking out about inadequate airport screening due to poor training of airport screeners. Nobody listened. Then 9/11 happened. Today our union, SEIU, continues to advocate for more training for security officers and pushing for higher standards and lower turnover. For example, today SEIU Local 32BJ has a program called "New York Safe & Secure" that is training thousands of Manhattan security officers and other property services workers in cooperation with the NYPD. Hopefully, this time, people will listen to our plea to improve standards and training in the security industry.

Our union makes us all safer by insisting on higher training, better wages and benefits so that workers perform with the highest level of professionalism.

When union security officers get paid more, they stay on the job longer. When officers stay on the job longer, they can do their job better. There is more opportunity to improve their skill through training. In Chicago, where security officers in downtown have been in SEIU for decades, the turnover rate is 25 percent a year while in non-union cities, the turnover rate is 100% or even as high as 300% in some places. With a union, officers get more training, more respect for the work they do and have more dignity on the job and, most importantly, they provide better security services.

Without a strong union of security officers we know what happens: security officers become nothing more than a body in a suit. People are not trained. They get paid crumbs with no benefits. They leave the job after only a few months, sometimes only a few weeks. The job turnover rate may be 300 percent. We never had that in the World Trade Center. That is why a few years ago USA Today called private security the "Weak Link" in our homeland security.

Security officers have come to SEIU because they make less than the janitors in buildings where SEIU represents the cleaners. Isn't that a sad commentary on how we value the workers who we trust to keep us safe and secure.

The problem with private security is that not enough officers have unions. I know because I have talked to officers all over the country. They want a union so they can provide for their families, build their careers, and be respected and rewarded for the work they do. They want their jobs to be more professional. They want to be trained, and they want protection from getting fired if they speak-out about poor training or security problems. Unions provide whistle-blower protection for workers who tell the truth.

Since 9/11, it is a fact that the security companies, office building owners, and the government have done very little to systematically address the problems with private security. Since 9/11, however, SEIU and other labor unions have been out front helping security officers nationwide improve training and raise industry standards. With my written testimony you will find citations of reports reflect why we need better security in our private and public buildings and infrastructure.

It saddens me that we are still having this conversation five years later. Instead of asking whether or not security officers should be in a union, we should be asking why some security companies and large commercial building owners have been standing in the way of security officers efforts' to raise the standards of their profession by forming a union.

The best way to protect our national security would be to honor the legacy of the union security officers at the World Trade Center who lost their lives on 9/11 doing a job they loved. They were the original first-responders—union and proud, trained, prepared, and ready to defend our country.

Thank you.

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Chairman JOHNSON. Thank you, ma'am. I appreciate your testimony.

General Foley, you are recognized.

**STATEMENT OF BG DAVID FOLEY, USA (RET.), PRESIDENT,
 WACKENHUT SERVICES, INC.**

General FOLEY. Thank you, sir.

Good morning, Mr. Chairman and distinguished members of the committee. My name is Dave Foley, president of Wackenhut Services Incorporated.

Thank you for the opportunity to testify before this committee to discuss the Taft-Hartley Act issues regarding security and Federal facilities' concerns about having mixed units as opposed to security-only units protect these national sensitive facilities.

Wackenhut Services Incorporated provides security to many of these sites. However, attempts by outside mixed units—specifically, the SEIU—to get Wackenhut to waive the rules under Taft-Hartley has us very concerned.

Let me tell you a little bit about my company and my background before I go into the 9(b)(3) issues.

Wackenhut Services Incorporated employ 8,000 full-time workers and provides security and fire protection to over 90 sites throughout the United States and overseas—DOE, DOD, NASA, and then we have 600 firefighters in Iraq providing all the fire fighting and emergency services for our soldiers, sailors, airmen and Marines deployed.

WSI has collective bargaining agreements with seven 9(b)(3) security unions. WSI has 45 years of history of providing the best protection for people and property in the security industry.

WSI's operations entail multiple levels of highly trained paramilitary response teams equipped with rapid fire and special weapons, armored vehicles, helicopters, Marine patrols and full service fire and rescue. We are the astronaut rescue force at the Space Center.

We are here today to ask for your help in protecting the Taft-Hartley 9(b)(3) provisions and to protect national security.

The SEIU, the Service Employees International Union, which is a mixed union representing a diverse number of occupations, has been coercing WSI through a corporate campaign designed to damage our reputation and asking us to waive the U.S. government's right to protect their facilities under Section 9(b)(3).

They are asking to sign a neutrality agreement and to waive our rights of our employees to a secret ballot election sponsored by the NLRB.

Dr. Jarol Manheim, the professor of media, public relations and political science at George Washington University, describes a corporate campaign as an organized assault involving economic, polit-

ical, legal, regulatory and psychological warfare on a company that has offended a labor union.

We have several examples that we can cite, and clearly there is some in the testimony. But clearly, tremendous pressure has been placed upon my company in an attempt to get us to waive our rights under the 9(b)(3).

The 9(b)(3), as you have heard, is a section—when Taft-Hartley amendments to the Wagner Act were authored, there were—a special section that specified that guard unions must be separate from non-guard unions or mixed unions so that any labor dispute does not affect the security of the site.

I have included the actual text in the written testimony for you. The authors of the 9(b)(3) anticipated that different representation was needed for the workforce that protected facilities, and hence you see the security guard-only unions.

WSI believes that the 9(b)(3) rule protects national security, particularly when it is applied to the strategic assets of the Department of Defense and the Department of Energy installations. And we don't believe that we ought to be able to waive that right for the Department of Energy or for the Department of Defense.

We won't waive our 9(b)(3) entitlements. And additionally, it is particularly offensive to WSI that SEIU would demand that we give up our employees' rights to a secret ballot election in favor of a card-check process.

The majority of our officers are ex-or former military and law enforcement officers, and they have sacrificed to protect the rights that we enjoy as Americans; specifically, the right to vote.

Now, SEIU has already demonstrated that they endorse coercion as a tactic. They are trying to coerce our company. We would expect the same kind of treatment for our employees if we allowed this card-check process.

In conclusion, to ensure that non-guard unions cannot coerce government contractors into signing these illegal waivers, the Congress should make it clear, at least on sensitive DOE and DOD sites, that agencies should not allow any contractor who provides security to sign such a waiver with the SEIU or any other mixed union.

If the law is ignored, there is a possibility the strategic Federal facilities, including DOD, DOE, NASA and other highly sensitive complexes could have their security compromised. The National Labor Relations Board should not have the power to make or change the law. Only Congress should.

And it should not be left up to the appointees of an administrative board to make law by de facto proxy, specifically when it comes to the defense of our nation. Congress should act now to protect the precedents as well as the security of our country by strengthening the law, not by ignoring it.

Mr. Chairman, thank you very much, and I would be happy to answer any questions.

[The prepared statement of General Foley follows:]

**Prepared Statement of BG David W. Foley (USA Retired), President,
Wackenhut Services, Inc.**

Mr. Chairman and Subcommittee Members, thank you for the opportunity to testify before the Education and Workforce Committee to discuss the Taft-Hartley Act

issues regarding security at federal facilities and concerns about having "mixed" unions as opposed to security-only unions protect those national security sensitive facilities. Wackenhut Services Incorporated (WSI) provides security to many of these sensitive facilities with employees who belong to security unions and we enjoy an excellent working relationship with those officers. However attempts by outside "mixed" unions to get Wackenhut to waive rules under Taft-Hartley and allow those "mixed" unions to represent our security officers has us very concerned. I will speak later about those specific concerns and what recommendations we have to offer the committee to address those issues.

By way of explanation for my perspective on these topics I would submit that my views are shaped by 31 years experience with the United States Army and an additional five years with WSI providing security to both the U. S. Department of Energy (DOE) and the U. S. Department of Defense (DOD). I have served as either the Chief Operation Officer or WSI President for the past three years, after having previously served for two years as a Senior Vice President and General Manager for WSI at the Department of Energy's Nonproliferation and National Security Institute (NNSI). The NNSI is DOE's central training facility as well as a national training center for other governmental agencies.

Prior to joining WSI, I was a member of the U.S. Army Military Police Corps (MPC), having held every position in the MPC from Platoon Leader through Chief of Military Police. I finished my career as the Commanding General of the U.S. Army Criminal Investigation Command. My specialization was in Military Police training and operations as well as serving on the Army Staff and as part of the U.S. Special Operations Command. I am also a graduate of the Army's Command and General Staff College and the National War College in Washington, D.C.

For the record, I would like to provide some information on the background and performance of WSI with regard to the provision of law enforcement, security, fire, emergency response, aviation and operations and maintenance services to the Departments of Defense and Energy. It is vital for you to understand the services provided by WSI and the level of excellence we have achieved at our various contract sites in order to more fully understand the ramifications of the outcome of this hearing.

WSI Background

Wackenhut Services, Incorporated employs over 8000 full-time employees and provides security and fire protection to over 90 sites throughout the United States and overseas. The average wages and benefits within WSI exceed the security industry average by over 40% and are ahead of major competitors. WSI pays almost 75% of employee health care expenses. WSI also has the highest staff retention in the United States security industry.

WSI has collective bargaining agreements with seven 9(b)(3) security unions. They are the Security Police and Fire Professionals of America, National Association of Special Police and Security Officers, Independent Guards Union of America, United Government Security Officers of America, Independent Guard Association of Nevada, United Union of Security Guards and the Independent Employees Service Association.

WSI has a 45 year history of providing the best protection of people and property in the security industry. WSI operations entail multiple levels including highly trained paramilitary response teams equipped with rapid fire and other special weapons, armored vehicles, helicopters, marine patrol, full service fire rescue and high-end security guard/officers, training and security consulting services.

Training requirements are contract specific but all receive substantial weapons and use of force training. Our DOE officers attend a DOE Academy and other offices are Special US Marshals, hold GSA certification, are Special Police Officers and many have state Law Enforcement credentials. WSI meets the state licensing requirements at all our contract locations. Our DOE officers receive substantially more initial entry and sustainment training than most local and state police agencies. In short these are some of the best trained security officers in the world.

WSI protects America's most sensitive Department of Energy and Department of Defense facilities such as Savannah River, Oak Ridge, Nevada Test Site and Fort Bragg. As you know these DOE sites are critical to our nuclear weapons programs and Ft Bragg is home to the US Army's ready response force, the 82d Airborne Division, and our special operations forces.

WSI is proud to protect our most vital assets. Additionally, the WSI Fire and Emergency Service in Iraq is the primary emergency response capability for 18 DOD fire departments. The start-up of 18 fire departments in Iraq represents the largest single fire and emergency services effort in a combat zone in over 30 years.

WSI Performance

WSI has been recognized for excellence in the provision of security to both DOE and DOD contracts. The most important recognition a security contractor can receive is the performance ranking. WSI rankings from DOE and DOD have been outstanding over the past five years resulting in renewals of contracts multiple times at all of our major contracts.

As proof of the excellent performance I have included the following information in regards to our work at DOD Army sites and our three largest DOE sites, Nevada Test Site, Oak Ridge and Savannah River:

- In 10 DOE performance ratings over the last five years at the Nevada Test Site, Wackenhut has received only one score under 95%. The average rating for Nevada Test Site over the last five years is 96%.
- The last nine DOE performance ratings for WSI at the Oak Ridge facility have been 93% or higher, with an average score of 97% over the last five years.
- WSI has received scores of 96% or higher in the last ten DOE performance ratings at Savannah River Site. Five of those ten were perfect 100% ratings. The average rating for Savannah River Site over the last five years is 99%.
- The average performance rating for WSI Army site contracts over the last three years is 97%.

More specifically, the following are a few examples of significant accomplishments by the WSI Savannah River Site (WSI-SRS) team in 2004-2006. These are offered as a summary of the types of awards WSI wins on a consistent basis throughout our operations.

- The Commission on Accreditation for Law Enforcement Agencies (CALEA) awarded WSI-SRS the highly regarded and broadly recognized Public Safety Training Academy Accreditation for a three-year period. To date, WSI is the only private security firm with this National Accreditation.
- The WSI-SRS Aviation Program earned national recognition this year by winning the Department of Energy Federal Aviation Program Award. The DOE Operations Support Professional Award for 2004 and the GSA Federal Aviation Operations Support Professional Award for 2004 was awarded to WSI-SRS Aviation Chief of Maintenance. The WSI-SRS Aviation Program has received the Helicopter Association International's (HAI) Annual Operator Safety Award each year from 1986 to 2006.
- At the 2006 Security Protection Officer Training Competition (SPOTC), WSI-SRS captured the top team and individual events for the third consecutive year, and the WSI-SRS team won the 2006 Secretary's Trophy, and the 2006 Security Police Officer of the Year Award.
- WSI-SRS Canine Teams competed in two United States Police Canine Association (USPCA) events earning first and second place in a number of categories. In addition, all WSI Canine Teams successfully completed their USPCA certification requirements.

The above distinctions serve as examples of WSI actions that lead to innovative programs, cost efficiencies and mission accomplishment for the Department of Energy and Department of Defense. It is a reflection of the tremendous accomplishment, ability and background possessed by the entire WSI team at all locations.

National Labor Relations Act and 9(b)(3)

Regarding the Taft-Hartley law that I spoke to earlier, I have provided some background in order to better understand the purpose and intent of the drafters of this important legislation on the issues of security based issues.

When the Taft-Hartley Amendments to the Wagner Act were authored there was a special section included which specifies that a "guard" union must be separate from a "non-guard" or "mixed" union so that any labor dispute does not affect the security of the site that those unionized guards are protecting. This section of the Act is known as the 9(b)(3) rule.

The actual text of the National Labor Relations Act reads as follows (emphasis added):

Sec. 9 [§ 159.] (b) [Determination of bargaining unit by Board] The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act [subchapter], the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: Provided, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determina-

tion, unless a majority of the employees in the proposed craft unit votes against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

The authors of Section 9(b)(3) anticipated that different representation would be needed for the workforce that protected facilities than the representation of those generally working at the facility. If general employees at a plant or warehouse or some other form of business were to strike and the employees guarding that business were affiliated with the striking employees, thereby supporting their fellow brothers by also striking, the business would be left unprotected.

This realization is particularly stark when one considers that the very same situation could happen at a nuclear weapons facility, military complex or other highly strategic asset within the United States. The national security of this country could be jeopardized by something as small as a dispute over fringe benefits.

WSI believes that the 9(b)(3) rule protects national security, particularly when it is applied to strategic assets such as DOD and DOE installations currently guarded by WSI. We further believe that previous NLRB rulings have consistently supported the right of the employer to be protected by 9(b)(3) and that the employer is the only entity with the power to undermine that right.

For this reason we have negotiated with seven different guard-only unions, secured excellent working relationships with those unions and insisted that employees who desire to join a union be represented by guard-only unions.

We make no apologies for this as we are in the business of providing security to the nation and in our assessment to do otherwise imperils our country's safety at a time when there are those who would do our nation harm. The moral quality of this course of action is consistent with the values we cherish and impart throughout WSI.

There are significant and serious national security implications resulting from a specious interpretation of this section of the National Labor Relations Act by the National Labor Relations Board (NLRB). In an administrative ruling almost 20 years ago the NLRB stated:

"The policies of Section 9(b)(3) and of Burns I are not inconsistent. Section 9(b)(3) is grounded in a concern about the protection of certain property rights of an employer, and that concern is not undermined when the employer voluntarily waives its 9(b)(3) rights and recognizes a guard/nonguard union for a unit of guards." [Stay Security, 311 NLRB 255]

Some "mixed" unions, who represent employees other than just security guards, are using this specious interpretation to pressure security companies to waive the 9(b)(3) protection provided by the Taft Hartley amendment.

WSI believes this ruling puts the real right of the 9(b)(3) protections with DOE and DOD as the employer concerned with property rights. The facilities WSI protects are owned by the United States government, specifically the Department of Defense and the Department of Energy. We hold that it is the right of the government through DOD and DOE to decide if the 9(b)(3) right to protection of property with guards represented by guard-only unions should be waived.

Further, we would encourage Congress to establish the government's right to protection of its property by enacting legislation that would ensure top national security facilities are not left vulnerable to attack in the event of a mixed union strike by guards with divided loyalties.

SEIU and the Corporate Campaign

The Service Employees International Union (SEIU), which is a "mixed" union representing a diverse number of occupations, has been pressuring WSI, through a "corporate campaign" designed to damage our reputation, to waive the US Government's right to protection under Section 9(b)(3), to sign a neutrality agreement and to waive the right of our employees to a secret ballot election sponsored by NLRB.

Neutrality Agreement

Signing a neutrality agreement with SEIU is just plain wrong. It violates 9(b)(3) and particularly in the face of the unethical corporate campaign they are running against our company and employees would be irresponsible leadership on the part of WSI. SEIU has conducted attack after attack on WSI for the last two years.

There are two recent examples that illustrate exactly how devious and unprincipled SEIU has become in its reckless quest to try to coerce WSI into signing an agreement with them and waiving 9(b)(3). Both of these attacks were designed to influence a pending procurement process and damage the reputation and bond that WSI has built with two of our clients, the Department of Energy and the Department of Homeland Security.

The first case happened in Tennessee where WSI has held the security contract for the Y-12 National Security Complex and the Oak Ridge National Laboratory since 1999. The contract for security services at this site is currently being re-bid and WSI is competing to renew its contract.

This past Spring, WSI became aware through multiple congressional staff members that their offices had been receiving telephone calls from an "888" number in which it appeared that a direct marketer (or some type of telephone bank operator) was connecting constituents with the congressional office through a conferencing capability. We received information about these calls from staffers of Senator Lamar Alexander's office and Congressman John Duncan's office.

From these staff members, we understand that the calls clearly were an orchestrated campaign against WSI's operations at the Oak Ridge Tennessee facility, as part of the larger corporate campaign instigated by the SEIU against WSI in an attempt to influence the procurement.

The phone bank operator would remain on the line after the call had been connected and while the constituent was speaking with the congressional staff. The staff members reported that during some of these telephone calls they could hear the other individual on the line coaching the constituent regarding the supposed grievances the individual wanted the constituent to report. The congressional staff said that the constituents clearly were not very familiar with the claims they were making and were relying upon the third party for information.

In instances where the congressional staff members inquired about the presence of another person on the call, the other party on the line declined to identify themselves and instead quickly disconnected from the call. According to Senator Alexander's staff, in one instance the constituent said that the person placing the call was with SEIU.

In addition, we were informed by the spouse of an employee of WSI that, during the same period, she received a similar "marketing" call. The call was initiated by a woman who identified herself as Lillian Hennessy and said that she was calling from New York on behalf of SEIU. Ms. Hennessy encouraged the employee's spouse to contact her congressional representatives. (Such discussion ended when this individual voiced disagreement.) This individual noted that the telephone call came from a toll-free "888" telephone number. Given the substance of the message communicated during these telephone calls and the similarity between the calls reported by members of the public and congressional staff, it is clear that the communications to congressional offices are being instigated at the behest of SEIU.

While reprehensible and feckless, these tactics are not surprising to us. It has become quite clear over the past two years that SEIU will stoop to any level to do damage to the reputation of WSI and our security personnel. SEIU clearly has attempted to influence the Oak Ridge procurement because we will not bow to their "corporate campaign" and waive 9(b)(3).

In another instance, the SEIU orchestrated a smear campaign against WSI at the Department of Homeland Security Headquarters in Washington, DC. The DHS communications staff, led by the now former DHS employee Brian Doyle, was completely incompetent in their response to the SEIU attacks failing to defend their agency or their security contractor, WSI, from unsubstantiated rumors by disgruntled former employees and union officials.

SEIU recruited three employees who had been fired by WSI to make unsubstantiated and outrageous claims about the security at DHS Headquarters at the Nebraska Avenue Complex. They spun their story to the press, got a sympathetic reporter to write a story, held a press conference across the street from DHS and continued to spread the spurious rumors despite knowing they were unfounded.

WSI responded to this scurrilous attack through the press and also wrote directly to the Secretary of the Department of Homeland Security Michael Chertoff, asking him to direct his communications staff to set the record straight. Much like their past response to many problems DHS remained silent. They refused to defend themselves against the union's untruths.

Part of our response to the allegations which included claims that WSI security personnel mishandled a package with white powder, maintains too small a presence at gates and did not provide the proper equipment or training included the following points:

- The widely reported incident in which a WSI security officer mishandled an envelope with the white powder did not happen as reported. The facts are that WSI officers were approached by a DHS employee with the envelope that reportedly contained white powder. The envelope—as is the procedure—had already undergone the appropriate testing in the mailroom. The WSI security personnel notified their command center and asked the DHS employee to remain on the post. The DHS employee refused and walked back to his office with the envelope. The WSI officer notified DHS security. DHS security quickly arrived and, took control of the envelope, placed it in a plastic bag and ordered an evacuation. At no time did WSI security officers even touch the envelope much less mishandle it. WSI personnel followed approved procedure and were praised by DHS security officials..

- The recent contract award for services at DHS headquarters was the culmination of a normal procedure and no performance-driven concerns drove the process. On April 1, 2005 GSA/DHS assumed full control of the previously run NAVY NAC contract. GSA/DHS had one year to develop an RFP to compete the security contract. In November 2005, as planned, DHS issued an RFP for a permanent security force for an anticipated start date of April 1, 2006. While the proposal process was in place, WSI was awarded, sole source, as an interim contractor, an additional four month contract with two additional 60 day options. This happened on March 1, 2006 and on March 31, 2006, DHS announced the end of the interim contract and the start of the permanent contract and awarded it in an openly competitively bid process to Paragon. This was a natural contract process and was not caused by any performance-driven concerns.

- During our service at DHS Nebraska Avenue Complex, we believe (and confirmed with appropriate Department personnel) we met 100% of the training and performance requirements as requested by the Navy.

- The former employees of WSI that held a press conference supported by SEIU alleged that they were not properly trained and had no idea what to do if a situation escalated. These allegations are simply untrue and unfounded. WSI met all Navy requirements in regards to training, met or exceeded all required weapons training classes and additionally provided training in First Aid, CPR and the use of deadly force.

- Another charge made by an Associated Press reporter had to do with accounts of under-guarded building entrances and improper detection techniques used by security officers at the front gates. These were reportedly observed by the reporter as he sat across the street from the entrance to the facility. The reporter is not a security expert and would not know what the proper techniques were from casual observation. He also is not aware of the multiple layers of security and checkpoints that exist throughout the facility. WSI personnel carried out all procedures that were required by the Navy contract.

The entire DHS controversy was an SEIU orchestrated attempt to influence the DHS procurement process and was designed to attempt to force WSI to sign the SEIU agreement. Simply put, SEIU will use half-truths and lies in the conduct of their “corporate campaign” against WSI.

Right to a Secret Ballot Election

It is particularly offensive to WSI that SEIU would demand that we give up our employees’ right to a secret ballot election in favor of a card check process. As I mentioned in my opening comments, the majority of WSI security officers are former military and law enforcement. They have all sacrificed to protect the rights we enjoy as Americans.

It is my opinion that the right to vote is one of the most important of those rights. Since the Constitution of the United States was ratified in 1789 it has only been amended 27 times. Five of those amendments, the 15th, 19th, 23rd, 24th and 26th were adopted to keep states from limiting suffrage.

At one time in America you had to be white, male and wealthy in order to vote. Brave men and women challenged that and won. Thomas Dorr fought for the right of the poor to vote in Rhode Island. Alice Paul was imprisoned for picketing President Wilson for the right of women’s suffrage. Bob Moses withstood police arrests and beatings from Mississippi police in his work with the Student Nonviolent Coordinating Committee for the right of African-Americans to vote.

It is unconscionable and immoral that in 21st Century America there is an organization asking to deny the right of others to vote.

The Chamber of Commerce website has provided examples of what the courts have to say about union authorization cards in opposition to secret ballot elections. Here are a few examples:

- “[S]ecret elections are generally the most satisfactory—indeed the preferred—method of ascertaining whether a union has majority support.” *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 602 (1969).
- “[I]t is beyond dispute that secret election is a more accurate reflection of the employees’ true desires than a check of authorization cards collected at the behest of a union organizer.” *NLRB v. Flomatic Corp.*, 347 F.2d 74 (2nd Cir. 1965).
- “An election is the preferred method of determining the choice by employees of a collective bargaining representative.” *United Services for Handicapped v. NLRB*, 678 F.2d 661, 664 (6th Cir. 1982).
- “Freedom of choice is ‘a matter at the very center of our national labor relations policy,’ and a secret election is the preferred method of gauging choice.” *Avecor, Inc. v. NLRB*, 931 F.2d 924, 934 (D.C. Cir. 1991).

Waiving of 9(b)(3)

The SEIU has demanded WSI “waive” the 9(b)(3) rule based on the previously mentioned interpretation of the Taft Hartley law made by the National Labor Relations Board almost 20 years ago. This pressure has been applied with no forethought by the union given to the following:

- The 9(b)(3) section of the National Labor Relations Act specifically prohibits the National Labor Relations Board from including guards in the same unit as other employees. It further prohibits the Board from certifying a labor organization as the representative of a plant guard unit if the labor organization has members who are non-guard employees or if it is “affiliated directly or indirectly” with an organization that has members who are non-guard employees.
- The 9(b)(3) section of the law has never been legally amended to allow what SEIU is demanding these companies consent to do.
- The 9(b)(3) section of the law exists to protect property and American citizens. Security guards represented by a mixed union would be compelled to be loyal to their fellow union members in the event of a strike—leaving property and citizens unprotected while the guards are on the picket line.

Conclusion

To ensure that non-guard unions cannot coerce government contractors into signing these illegal “waivers” the Congress should make it clear that, at least on sensitive DOE and DOD sites, the agencies should not allow any contractor who provides security to sign such a “waiver” with the SEIU or any other mixed union.

If the law is ignored there is a possibility that strategic federal facilities, including DOD, DOE, NASA and other highly sensitive complexes, could have their security compromised. In a post 9-11 world there is no room for error when it comes to the protection of the United States’ military, intelligence and weapons capabilities.

The National Labor Relations Board does not have the power to make or change law—Congress does. It should not be left up to appointees of an administrative board to make law by de facto proxy, especially when it comes to the defense of our nation. Congress should act now to protect its precedence as well as the security of our country by strengthening the law, not letting it be ignored.

Thank you, Mr. Chairman, for the opportunity to appear before this Subcommittee today and offer my views on an issue that is of vital importance to the national security of the United States of America.

Chairman JOHNSON. Thank you.

I appreciate the testimony of all of you.

General, I wonder if you could say a little more in detail what sorts of services your company provides that would directly affect national security, i.e. the types of facilities, types of work your employees do, and how you feel that that work and those services would be impacted if you were working with a mixed union.

General FOLEY. Yes, sir. As I said, we are at many of the DOE sites, approximately 70 percent of the Department of Energy nuclear weapons sites—Oak Ridge, Savannah River, the Nevada test site, and other smaller sites.

We are at many of the Department of Defense installations, both as access control on the outer gates and then, in the case of Fort Bragg, internally at the special operations and JSOC center.

We provide much of the security and fire protection for NASA, and we do that through the 9(b)(3) security unions, and we feel, clearly, that the 9(b)(3) was put into place by the framers for the purpose of insisting that there was a separate union, that did not—was not representative of the workers on that site.

And we feel that protection is very, very important for the site. And most importantly, sir, we don't feel that we as the employer ought to be able to waive that for the Department of Energy or Department of Defense. And in our case, that is what we are being asked to do.

And clearly, we are enforcing substantial security, substantial rules, substantial regulations, and we feel like those bargaining units ought to be separate.

Chairman JOHNSON. Well, thank you. I kind of agree with you. The fact that you get a mixed union sometimes—I think you may have experienced it—in other areas where if it is not a guard unit, they might have different goals for their union than the guard union. And if they are the same union, they possibly could impact the guard operation.

You all do a lot of prison work, too, don't you?

General FOLEY. Sir, there is a difference between the Wackenhut Corporation and Wackenhut Services Incorporated. The Wackenhut Corporation generally is the commercial operation of about 38,000 people. Wackenhut Services is the government-cleared operation of about 8,000 people.

So we have the security clearance work and the sensitive governmental work. We are an American proxy board company that belongs ultimately to Group 4 Securicor, a company in Great Britain. But we have an American proxy board that completely firewalls us from the Wackenhut Corporation and from the Group 4 Securicor.

So the prison work is run by a company called Geo, which was a subsidiary of the Wackenhut Corporation. It was sold and is its own independent company at this time. The name continues to be used.

Chairman JOHNSON. We still call it that——

General FOLEY. Yes, sir.

Chairman JOHNSON [continuing]. At least in Texas. Thank you.

Mr. Schurgin, as a practical matter, it doesn't sound like to me that any employer would voluntarily recognize a mixed union. It sounds more like they are being backed in a corner. Would you care to comment?

Mr. SCHURGIN. In my experience, sir, at no time have any of my clients voluntarily recognized a mixed guard unit.

I think the issue under Section 9(b)(3) is that it is the employer's choice to make the decision as to whether there is a concern over mixed loyalties in their choice to voluntarily recognize such a union.

The problem is that unions are exerting corporate campaign tactics, pressure tactics, which you have heard from Wackenhut just a moment ago, to really force employers into agreeing to card-check neutrality agreements.

That, to me, flies in the face of the concept of voluntary recognition.

Chairman JOHNSON. Yes, I believe in the secret ballot, and I am sure you do, too.

Mr. Andrews, my time has expired. You are recognized for 5 minutes.

Mr. ANDREWS. Thank you.

The title of this hearing is Do Combining Guards and Other Employees in Bargaining Units Weaken National Security. Well, odd. We have had a debate about people's views on corporate campaigns as to whether they are for them or against them, and we probably should have a hearing about that some time.

But I am interested in asking some questions about the topic of this hearing. The Bureau of Labor Statistics estimated there is 122,000 security guards working protecting critical infrastructure. And I assume that they fall, Mr. Schurgin, into three camps.

There would be—some of those individuals—probably most—are not organized, not members of unions. Some would be members of guard-only unions under the statute. And others—I would assume the smallest category would be in mixed guard and non-guard unions.

Has your organization conducted any research on differences in quality of security among those three categories?

Mr. SCHURGIN. No, we have not, sir.

Mr. ANDREWS. Are you aware of any research that exists that distinguishes among those three categories?

Mr. SCHURGIN. I am not, sir.

Mr. ANDREWS. OK.

General Foley, how about you? Same question. Has your company conducted any research on whether there is a difference in quality among those three categories of guards?

General FOLEY. No, sir, we haven't conducted any research.

Mr. ANDREWS. Well, let's look at something more closely that I am sure you do know about. My understanding is that your company is responsible for security at the Dresden nuclear power plant in Illinois, is that correct?

General FOLEY. Sir, the same answer that I gave the chairman—the Wackenhut Corporation has a nuclear power division that would be responsible for that. We really are not—we are the—

Mr. ANDREWS. Is it the same—

General FOLEY [continuing]. Wackenhut Services Incorporated, so we have the Department of Energy and NSA weapons plants. We don't have any of the commercial nuclear power plants whatsoever.

Mr. ANDREWS. OK. Well, then your—is it fair to call it your sister company or cousin company?

General FOLEY. Sir, they would be—I guess you could—we are a wholly owned subsidiary of that company.

Mr. ANDREWS. OK.

General FOLEY. We have an American proxy board that completely separates us. In fact, I can't talk to those individuals without getting permission from our government security council, so—

Mr. ANDREWS. So there is a related company in some way that has responsibility at Dresden. Are you aware of any—and that is a mixed union situation, correct?

General FOLEY. Again, sir, I am not—I have no information whatsoever about the Dresden plant, so I am—I will try to answer as best I can, but I don't know if it is a mixed union or——

Mr. ANDREWS. It is.

General FOLEY [continuing]. A security-only union.

Mr. ANDREWS. No, it is. I assume, then, you are not aware of any complaints about security difficulties from the Excelon Corporation that runs the plant?

General FOLEY. Sir, I am not. I don't even know where the Dresden plant is.

Mr. ANDREWS. OK. Are you familiar with the contract that either your—perhaps it isn't your company, but one of your related companies—has at Fort Bragg——

General FOLEY. Yes, sir.

Mr. ANDREWS [continuing]. To protect the headquarters of Delta Force?

General FOLEY. Yes, sir.

Mr. ANDREWS. Now, is that a mixed union that is representing the security guards there?

General FOLEY. Sir, that is a mixed union.

Mr. ANDREWS. How have you done? Have you had problems there or difficulties with the client, or have you done pretty well there?

General FOLEY. Sir, that contract has run wonderfully.

Mr. ANDREWS. OK. I guess I am a little curious that I could not think of a more relevant location for national security than the headquarters of the Delta Force at Fort Bragg. It seems to be pretty significant.

And we have a situation where there is a mixed union, right? The union represents both guards and non-guards. And you just told us that it has worked just fine.

Why, then, do you testify that we should change the law so that other employers could not make the very same choice and have a mixed union represent employees at similar facilities if your own company has had such a great experience?

General FOLEY. Sir, great point. I would ask you to not allow me, as the employer, on Department of Energy or Department of Defense critical facilities to be able to waive the 9(b)(3) exclusion.

I would ask you not to do that, because there is tremendous pressure on companies like myself from the SEIU to be able to enter that market.

Mr. ANDREWS. What was wrong with your company waiving it at Fort Bragg? What damage to national security occurred as a result of——

General FOLEY. Sir, there was no damage to national security. That particular union was very cooperative and non-coercive. The SEIU has made a specific demand: You will waive the rights of 9(b)(3), sign a neutrality agreement, and do a card check, or we will destroy your company.

Now, sir, that is very coercive. There is nothing voluntary about that.

Mr. ANDREWS. I understand.

There is also nothing on the record that would answer the question that the hearing poses as yes. It seems to me that we have had witnesses who I just asked whether combining guards and

other employees in bargaining units would weaken national security.

No one has given us a shred of evidence that the answer is yes. And I yield back.

Chairman JOHNSON. How many people are in that facility down there?

General FOLEY. Sir, it is a relatively modest facility. At that particular site, there is about 100 folks. It is both JSOC and the compound.

Chairman JOHNSON. Yes, small unit.

You are recognized for 5 minutes, sir.

Mr. KLINE. Thank you, Mr. Chairman.

Thank you to all members of the panel for being here today. I think we need to explore a couple of issues here I am a little bit confused on, so I would appreciate your help.

The chairman asked about the size of the organization, General Foley, down at Fort Bragg.

Let me ask you, Mr. Hickey—it is probably here in front of me, but I just don't see it. What is the size of your union, the SPFPA?

Mr. HICKEY. We represent about 27,000 security professionals throughout the United States and Puerto Rico.

Mr. KLINE. Twenty-seven thousand, that would seem to be a little bit more than a small group. OK. Let's explore this conflict of interest issue. Mr. Andrews was asking if there was a specific breach of security down at Fort Bragg. Let's go at it another way.

You, I think, Mr. Hickey, have argued that guard-only unions or bargaining units prevent conflicts of interest. What would those conflicts of interest be and how does the guard-only union prevent that?

Mr. HICKEY. Well, clearly, our position hasn't changed in almost 60 years. We believe that we are the best organization to represent security officers and don't believe that there should be a change in 9(b)(3) of the National Labor Relations Act.

Mr. KLINE. Yes, sir. Excuse me. But what would be a conflict of interest?

Mr. HICKEY. The loyalty issue becomes a—could possibly be a conflict of interest where a security officer has to make a decision as to whether or not to do exactly what his job is or to protect a union brother and sister.

Mr. KLINE. OK. I assume that your organization is guard only, but you probably had the opportunity to look at mixed units, right, that include guards and non-guards, is that correct? Have you had a chance to get some assessment?

Mr. HICKEY. Yes.

Mr. KLINE. Help me to understand the difference here. You are very clearly convinced that a guard-only union is superior for its function than a mixed unit. Why?

Mr. HICKEY. Well, we would prefer that all security officers were in our union, obviously. That is a decision that we would prefer.

However, you know, based on your question, you know, we don't take a position if an employer and a non-guard union, a mixed union, want to have a voluntary recognition agreement. We don't take a position against that.

We do believe, though, that we are the best organization to represent security officers because that is all we represent. We specialize in the representation of security professionals.

Mr. KLINE. OK.

Let me switch it over to General Foley, sort of same question. If you had a mixed guard unit, what, in your judgment—what is the problem with that?

General FOLEY. Sir, as you heard, we do have a mixed guard unit at Fort Bragg and at one other location. Those operate well.

The problem comes in that since the Taft-Hartley amendments and the voluntary nature of this, we feel that because of the corporate campaign that is being waged against us by SEIU that we needed to raise this issue that says there is a national security concern here that this will not be a voluntary waiver of those 9(b)(3)—and that what the framers attempted to do was say if there is a reason to put these two unions—to put these two groups together and do a unit and have a mixed unit, that you might do it.

But we don't think that we as a company ought to be able to waive that right for the Department of Energy and the Department of Defense at these sensitive facilities. And currently, we are in that position where with the tremendous pressure by a mixed union—specifically, SEIU—we can put national security at risk.

Mr. KLINE. OK.

Mr. Chairman, I yield back.

Chairman JOHNSON. Thank you, sir. Thank you for your questions.

Mr. Tierney, I believe, you are recognized for 5 minutes.

Mr. TIERNEY. Thank you, Mr. Chairman.

Better audience here than Plano, Texas.

Chairman JOHNSON. Tierney came down to Texas, and I will tell you what, he got out with his skin.

Mr. TIERNEY. The John Birchers were out in wild force.

Chairman JOHNSON. You did a good job, sir. I appreciate it. Thank you.

Mr. TIERNEY. Ms. Boston, you know, one of the theories we just heard espoused here was this idea of divided loyalties, that somehow the guards would join strikes or picket lines of other bargaining units. Are you aware of that ever happening?

Ms. BOSTON. I didn't hear you, sir.

Mr. TIERNEY. All right. Is this microphone on? OK?

Ms. BOSTON. OK.

Mr. TIERNEY. One of the theories that we just heard talked about here was that there is a concern that guards will have divided loyalties, and they would join strikes or picket lines of other bargaining units. Are you aware of that ever happening?

Ms. BOSTON. No, sir.

Mr. TIERNEY. How does SEIU address that issue? Don't you put into your contracts a provision—a no-strike clause prohibiting guards from honoring picket lines?

Ms. BOSTON. Yes, sir.

Mr. TIERNEY. And has that generally held?

Ms. BOSTON. Yes, sir.

Mr. TIERNEY. Thank you.

Ms. BOSTON. And we make sure it is held.

Mr. TIERNEY. Thank you.

Mr. Foley, if I could address a question to you, now, sir, your company has been in front of me when I was on the Government Reform Committee in the last session.

And I have to tell you, I don't want to seem overly biased, but the company didn't cover itself in glory in terms of work that it had done in some of the nuclear power plants and the security provided for there.

And I won't go through a litany of the inspector generals' reports on that except to say that in many instances we relied on labor people to blow the whistle on that.

And I think one of the benefits of organized labor and good-sized unions is it gives people protection to be able to give the government and the overseer of these things an idea of what we ought to do for oversight and to better protect our facilities.

But you had written testimony, and you say you make no apologies to oppose mixed guard unions; to do otherwise imperils our country's safety.

Your parent company, you just told us, is Group 4 Securicor. That company is based in the United Kingdom and provides security in over 100 countries. In February of this year, it signed a recognition agreement with a large British general labor union, GMB.

GMB is a general union. It represents workers in all sectors of the British economy. And now it represents Group 4 security guards in Britain, including Group 4 guards at the General Communications headquarters in Gloucestershire, England, which provides intelligence services to M15 and M16.

So your parent company has agreed to recognize a mixed union for its guard employees at some very sensitive sites in the United Kingdom. Would you say that your parent company has imperiled that country's safety?

General FOLEY. Sir, I think the labor laws over in the United Kingdom—

Mr. TIERNEY. Oh, sir, I am going to interrupt you just for a second, because my question, all right—

General FOLEY. Yes, sir.

Mr. TIERNEY [continuing]. Was are you telling us that your parent company has imperiled that country's safety.

General FOLEY. Sir, I am not prepared to answer that question for you. I am not aware that they have signed that agreement, nor am I aware to say that my parent company has imperiled their country's safety.

Mr. TIERNEY. Well, then let's do it this way. Let's assume that I am telling you the truth when I tell you that in February of this year they signed a recognition agreement with a mixed union.

You say that that would imperil our country's safety if it was done here. Do you say that, if you accept the premise that they have signed the agreement, they would be imperiling Great Britain's security?

General FOLEY. Sir, I wouldn't say that they were imperiling Great Britain's security. I have no information about what that campaign was like.

Mr. TIERNEY. Well, it has nothing to do with campaigns. It has to do with a mixed union, you know, working that facility. You

know, the campaign issue—I know you are all hot and bothered about that. We heard about it.

But we are here to talk about security.

General FOLEY. Yes, sir.

Mr. TIERNEY. So did that mixed union—did that company having a mixed union imperil Great Britain's security?

General FOLEY. Sir, I would say any union that would use coercion to—

Mr. TIERNEY. No, we are not talking—come on. You can have that debate when we have a hearing on, you know, corporate tactics and union tactics or whatever.

You know, you came in here to testify, ostensibly, about security.

General FOLEY. Yes, sir.

Mr. TIERNEY. Let's take another look at this. Group 4 has also recognized a mixed union in South Africa, the South African Transport and Allied Workers Union. So are they imperiling South African clients' safety?

General FOLEY. Sir, again, I am not prepared to talk about what—

Mr. TIERNEY. All right.

General FOLEY [continuing]. Group 4 is doing.

Mr. TIERNEY. Well, then they recognized the Hezmari Trade Union in Israel, a country that has suffered from decades of ongoing terrorist attacks. The Hezmari Trade Union is an affiliate of the mixed Histadrut Labor Federation, Israel's equivalent of the AFL-CIO.

So are we imperiling Israeli clients' safety when Group 4 does that?

General FOLEY. Sir, again, I think our labor laws are different, and I am here to talk to you about the 9(b)(3)—

Mr. TIERNEY. Well, we are here to talk about mixed unions and your claim that to allow them would imperil our country's safety. So now I have given you three examples of countries that allow them at some very sensitive security sites.

And I am asking you to tell me how that has imperiled their safety and whether or not your company, your parent company, in allowing that to happen has imperiled the safety of Great Britain, South Africa and Israel.

General FOLEY. Yes, sir. My contention is that in the United States the 9(b)(3) rule ought to be upheld, and clearly we should not have the capacity or capability of a mixed union to coerce a company into waiving the Department of Energy and Department of Defense—

Mr. TIERNEY. So you can't answer or won't answer my question about security. It appears in your mind that only American workers can't be trusted with a mixed union, is that about it, the bottom line?

General FOLEY. No, sir.

Mr. TIERNEY. I yield back.

Chairman JOHNSON. Mr. Kildee, you are recognized for 5 minutes.

Mr. KILDEE. Thank you, Mr. Chairman.

And, General Foley, my son has been an airborne Ranger-trained captain in the U.S. Army, so I share your concern that we have

proper protection for the Delta Force. He was not in the Delta Force, but has done similar work around the world on that.

So I share your concern, but actually you have a mixed union at that site, and you say there is no—you experienced no problem there, that they——

General FOLEY. Yes, sir.

Mr. KILDEE [continuing]. They are doing a good job.

General FOLEY. Yes, sir.

Mr. KILDEE. So the fact that a union is mixed is not really a problem. They can exercise their loyalty to their obligation.

General FOLEY. Sir, I think there are some circumstances where that would be true.

Mr. KILDEE. But here at——

General FOLEY. At Fort Bragg, that is true.

Mr. KILDEE. That is true. That is what I am referring to, Fort Bragg.

General FOLEY. Yes, sir.

Mr. KILDEE. So we have nothing to worry about a mixed union there at Fort Bragg, and that is a rather sensitive force, the Delta Force.

General FOLEY. Yes, sir.

Mr. KILDEE. Can you tell us of a situation or incident where mixed union members' security obligations to their employers is subverted because they belonged to a mixed union?

General FOLEY. No, sir, I can't give you an example. I don't know what the framers—what examples occurred back in the early 1940's when the framers put this together and insisted, so I don't have a specific example.

But again, I do believe that allowing me to waive this under coercion is something you ought to be concerned about.

Mr. KILDEE. Yet you are not aware of any problem where there is any subversion of obligations of members of these unions, either at the Delta Force area or——

General FOLEY. No, sir.

Mr. KILDEE. So are we then looking for a solution for a problem that does not exist?

General FOLEY. No, sir, I think a problem does exist. I mean, I think what you have got is an employer who has 70 percent of the nuclear weapons sites and substantial Department of Defense sites and NASA sites, and we have a mixed union that is attempting to coerce us into signing away the United States government's rights for protection on those sites.

Mr. KILDEE. But you are called here as an expert witness, which you are, with your background, and I don't question that expertise at all, but you really cannot cite any example where there has been any lessening of security or feeling of obligation of security on behalf of the members of these mixed unions.

General FOLEY. No, sir, I can't.

Mr. KILDEE. All right. Thank you very much, General.

General FOLEY. Yes, sir.

Chairman JOHNSON. Ms. McCarthy, you are recognized for 5 minutes.

Mrs. MCCARTHY. Thank you, Mr. Chairman.

I am having a real hard time here, hearing this discussion, because I am not hearing anything that has to do with national security.

And one thing I will say, because I come from New York and I certainly saw my union members go down there for recovery and working together—and I think today is a little bit different than going back. We are all Americans.

And I think our union members will all work together to make sure that this country is secure. So that, to me, is important.

And for anyone to say that any of our union members wouldn't be working together to have the training that they need to protect, certainly whether it is our nuclear power plants or our military—I know TSS just started a program at the airports basically training—whether it was the floor cleaner or the people that clean the bathrooms—that they were being trained for the eyes and the ears, so that every American can be certainly on top to look for anything suspicious, even—whether it is profiling or anything else—to look at anything suspicious.

So with that, I am having a hard time—what this hearing is actually really about. But let me give you a little background. In New York, as everybody knows, we suffered on September 11th. New York City continues to be a high-profile target for terrorist attacks. We know that. We are still No. 1—Washington, D.C., No. 2.

One landmark that is the most vulnerable, in my opinion, is certainly the Empire State Building and certainly Wall Street. It is not only the tallest structure in Manhattan but also the center of New York tourism and finance.

Recently, members of the New York delegation met with several security officers working the Empire State Building. They are contract security officers who have become increasingly frustrated with the low pay and the lack of health insurance provided by their employer.

My question would be when security guards have low pay and low benefits—and the average guard's salary across industry was \$19,400—that was in the year 2003—what does that mean for security, less training, less knowledge of the building, less loyalty?

Empire State Building has high turnover rate—55 guards transfer each month. Wouldn't collective high pay and benefits keep people there and improve the security?

So I mean, the question to all of you is what guarantee can the contractor make to ensure that the consistency and effective security of the building from a potential attack when the turnover is so high?

And I think that is something that—you know, when we have union representation, we see better coverage all the way. And I would be more than—to hear your answers.

General FOLEY. Would you like me to go first, ma'am?

Mrs. MCCARTHY. Absolutely.

General FOLEY. Yes. We certainly support union representation. At the sites that I am speaking of—at all our large sites, we have 9(b)(3) unions, with the exception of Fort Bragg, and clearly feel that the unions are very, very helpful in setting appropriate pay scales and very helpful in us being able to work those sites very, very securely.

All our sites are U.S. Government sites, so the U.S. Government sets the standard they would like at that particular location. A nuclear weapons plant might have different—or does have different security than Fort Bragg, which has different security than the Kennedy Space Center.

Each of those levels of security, each of the levels of training, are set by the U.S. Government. And in the unions—the 9(b)(3) unions are very helpful in achieving those levels of security. So this is not about does WSI recognize unions at all.

Mrs. MCCARTHY. But that is the point I am getting at. I am not seeing what this hearing is supposed to be about, which is national security. And I am not seeing where the answers are coming from. Going over all the testimony, I haven't seen where you are talking about having national security—I see that you want to talk, Ms. Boston.

Ms. BOSTON. Yes. And I am so honored to see you. I remember 9/11, and you were there with us. And what you said by me being in the field is exactly what you say when I hear security officers' stories.

The fact is that they have loyalty, but they also want to have loyalty to be able to know how they are going to be able to feed their families. And what happens is that speaking to security officers, they realize that they don't receive the dignity and the respect because people—they are not trained the way they want to be trained.

They look at their self with that uniform on and think that they should have the same respect that a police officer or a firefighter has. And what happens is that the turnover rate is so high that tenants that work in buildings can't remember them because the fact is no one stays because the fact is that they can't afford to stay at that job.

And me being in the field talking with security officers—some of them have two and three jobs because the fact is that they don't make enough.

And then to work in a building and knowing that they would have protection and have a voice on the job is what they are looking for so they can gain the respect and dignity that people have with police officers and firefighters, because the fact is they want to be able to secure the buildings with the tenants and the people that come in and out the building.

Chairman JOHNSON. Mr. Payne, you are recognized.

Mr. PAYNE. Thank you very much.

I am trying to browse through the testimony here, coming in a bit late. But I, too, think it is the same line of questioning that I would have with my colleagues here on this side of the fence.

I know that the hard-working people at SEIU—we have 32BJ over in New Jersey that have been attempting to organize janitors, the Justice for Janitors program that we kicked off in New Jersey 3 years or 4 years ago—and of course, the security guard issue.

I think that I, too—when I came in late, I thought I was confused for a good reason—I mean, I am confused sometimes for no good reason, but I thought I was confused for a good reason here, because—I wanted to get here early because of this concern about, you know, national security.

And that this hearing is about national security—being in New Jersey, 700 people perished in the World Trade Center who lived in New Jersey. We are very close to the whole issue. And national security is very, very important, I am sure, to all Americans, but to us in the New York-New Jersey region even more so.

And so I am wondering—the national security—when it is mentioned that you have a concern about these workers, the mixed union and non-union—but you don't have a single concrete example in your testimony of a mixed union undermining national security—you don't like SEIU's corporate campaign.

I think you had indicated that you felt that calling congresspeople on behalf of SEIU, raising issues about Wackenhut's Federal contracts—that there was something wrong with this, but this is the way this place works, as you know.

So I am just trying to find out whether you really believe that hard-working American men and women, working in the security area, would compromise our national security in the war on terror.

Many of them—you know, there were, I think, 16 security officers in the World Trade Center that perished. No one ever mentioned them. And so why would they want to jeopardize our security when we are all in this together?

I think that it is sad that we are dividing this country even more when we bring up issues that are not germane. It is un-American. And people have spent their lives as you have, in a noble position, being a general. I think we need to bring people together rather than to come up with issues that are frivolous, that are unsubstantiated, that are—not to bash unions.

Now, a lot of people don't like unions, and rightfully so. That is your right. That is business's right. However, I think it is wrong to put the fear tactic—we have Americans fearful of everything. And if we make up issues to even make Americans more fearful that some security officers are going to look the other way—you know, that really disturbs me tremendously.

And I would hope that we could get beyond that. They have done it with the air traffic controllers. We have taken people having the right to organize out of so many other areas.

And I just think that we are going from the ridiculous to the sublime when we start to try to make up this potential boogeyman who is going to show disloyalty to the country because they are going to sympathize and not do their job as relates to national security.

And so I am just shocked at, you know—purgatory has seven levels. You know, we continue to go further down as we talk about issues. And I don't think that is a question.

So I will yield back the balance of my time.

Chairman JOHNSON. The time of the gentleman has expired.

Thank you, Mr. Payne.

I am going to ask Mr. Hickey one question.

They have been ignoring you. I don't know why. But have you had the opportunity to observe how well mixed units including guards and non-guards function? And if you have, are there any concerns we ought to be aware of?

Or I guess another way of looking at it is why in your view are guard-only units superior to mixed units?

Mr. HICKEY. Again, you know, pursuant to my statement, I didn't come here today to take a position on guard union versus mixed unions. I thought the question was units, mixed units of guards and other employees.

Although I will tell you, again, we think that the SPFPA is best to represent security professionals because that is all we do. I mean, let's make that clear. That is our position, and we have no conflict with representing anybody else.

However, again, our position on the mixed guard unions—we are neutral as to the position as whether or not a guard group can be represented by a mixed guard union if there is a voluntary recognition.

Chairman JOHNSON. Thank you.

I think we are all interested in protecting the integrity of the United States of America and our country, both sides of the aisle, in spite of the questions that you might have heard this morning.

And I just want to thank you, witnesses, for your valuable time, and—

Mr. ANDREWS. Mr. Chairman, if I could—

Chairman JOHNSON. Yes.

Mr. ANDREWS [continuing]. I have one unanimous consent request, that I have a statement from the AFGE on collective bargaining, which I would submit for the record, with your consent.

Chairman JOHNSON. Without objection.

[The prepared statement from the AFGE follows:]

Prepared Statement of the American Federation of Government Employees (AFGE)

The Honorable Chairman Johnson and Ranking Member Andrews: the American Federation of Government Employees (AFGE), representing more than 600,000 federal employees, including the Transportation Security Officers (TSOs) working for the Transportation Security Administration (TSA) who are the first and best line of defense against acts of air terrorism submits this statement for the record of the hearing on Collective Bargaining and National Security before the Employer-Employee Relations Subcommittee of the Education and the Workforce Committee. Unionized emergency response professionals came to the country's defense on September 11, 2001, and continue to work diligently to ensure the public's safety against terrorism. Being organized in a union aided them in their ability to seek the necessary skills, experience, equipment, and work benefits that they utilized in their unprecedented efforts on behalf of our country. Collective bargaining rights for privatized transportation security screeners and federalized TSOs stands as both an honor to the courage of the 366 police officers and firefighters—all union members with collective bargaining rights—who were killed responding to the 9/11 terrorist attacks, and serves to facilitate the continuing commitment of those federal workers (including 60,000 union members working in the Department of Homeland Security) who continue the fight against terrorism.

Regulating management and labor disputes aids in minimizing such disputes, and therefore, is in the public interest; this is particularly true when the employees work on behalf of national security. Private sector employees working on behalf of national defense have had the right to collectively bargain throughout times of national security and strife. In fact, the National Labor Relations Board has specifically asserted jurisdiction over government contractors in the name of national defense, stating:

It has [eliminated requirements for Board jurisdiction not required by statute] * * * because it believes that it has a special responsibility as a Federal agency to reduce the number of labor disputes which might have an adverse effect on the Nation's defense effort.¹

Additionally, the Board has repeatedly asserted jurisdiction over government contractors even when those contractors work on security and/or national security issues for government agencies.²

There is no evidence to support the contention that collective action to secure safe, decent and healthy workplace conditions would conflict with transportation screeners' mandate to secure air travel for national security whether they be employees of a contractor or federalized TSOs employed by TSA. The Supreme Court has repeatedly affirmed "the right to organize and select representatives for lawful purposes of collective bargaining * * * as a fundamental right * * *"³ Prohibiting workers who perform baggage and passenger screening at U.S. airports from asserting their fundamental right to organize for the purpose of collective bargaining is not justified based on the unsupported belief that such concerted action would somehow undermine national security.

The current situation of TSOs who have been stripped of their right to organize for the purposes of collective bargaining is an example of the type and prevalence of workplace abuses that occur when an employer (private or government) believes they operate with unfettered accountability to their employees. Numerous government reports and newspaper articles decry workplace problems within the TSA that could be resolved through regulated employee organizing and collective bargaining that have a detrimental impact on the ability of TSOs to protect the public:

- For the fourth year in a row TSA and TSOs have the highest rate of on-the-job injury in comparison to any other agency or group of employees in the entire federal government including the Marine Corps.⁴
- The DHS Office of the Inspector General (OIG) revealed serious flaws in TSA training of its security screeners in a September 2004 report. While noting some improvements, the OIG found that, "neither passenger nor checked baggage screeners received instruction, practice, or testing for some skills necessary to their functions, such as safety skills to handle deadly or dangerous weapons and objects."⁵
- In its April 4, 2006 testimony before Congress, The Government Accounting Office stated that the annual attrition rate for TSOs currently is approximately 23 percent, including a 50% turn-over rate for part-time TSOs.⁶
- Continuing under-staffing at some airports has resulted in chronic mandatory overtime at many airports. Excessive mandatory overtime causes numerous problems for TSOs: for example, increased exhaustion (which leads to injury), difficulty in meeting child-care obligations, or both.

A collective bargaining agreement that provided for sufficient training, safety measures, fair overtime, rotations, and other terms or conditions of employment may have reduced the high levels of TSO injury and attrition, thereby assuring the career professional, federalized workforce the public demanded in the aftermath of September 11.

The NLRB has acted to ensure that private airport screeners the right to bargain collectively, along with the protection of labor laws. It is time for Congress to act to restore to federalized TSOs the protection of federal labor laws enjoyed by other DHS workers by passing legislation to repeal the statutory footnote in the Aviation and Transportation Security Act that federal courts and the Merit Systems Protection Board have broadly interpreted as denying TSOs enforceable labor rights, including the right to bargain collectively.⁷

The daily abuses endured by TSOs could be easily remedied with the right to collectively bargain, allowing TSOs and TSA to rightfully turn their attention to ensuring the safety of air travel and preventing terrorist attacks like the terrible events of September 11, 2001.

ENDNOTES

¹Ready Mixed Concrete and Materials, Inc. and Local #669, Concrete Products and Material Yard Employees, 122 NLRB 318, 320 (1958).

²See U.S. Corrections Corp. and International Union, United Plant Guard Workers of America, 304 NLRB 934 (1991); and Castle Instant Maintenance/Maid, Inc. and SEIU, 256 NLRB 130 (1981).

³International Union Auto Workers v. Wisconsin Employment Relations Board, 366 U.S. 245, 259 (1948).

⁴TSA: The Most Injured Feds, *FederalNewsRadio.com*, August 3, 2006., Occupational Safety and Health Administration Federal Injury and Illness Statistics for Fiscal Year 2006 (First Quarter Totals).

⁵Department of Homeland Security, Office of Inspector General.

⁶General Accounting Office testimony before the Subcommittee on Federal Workforce and Agency Organization, Committee on Government Reform, April 4, 2006.

⁷49 U.S.C. 44935 note.

Mr. ANDREWS. And the second thing, if I might take a point of personal privilege, I know because of the term limits rule on your side of the aisle, and we think because of the will of the voters in the country on our side of the aisle, that this may be the last hearing that you chair of the subcommittee.

I just wanted to extend our appreciation for your graciousness, fairness and the chance we have had to work together. I think I understand the rules correctly that you don't get—am I incorrect about that, that you get three? Well, if your side is in the majority, we hope that you will be back in the chair.

But we frankly hope your side won't be in the majority.

[Laughter.]

But I did want to extend our appreciation for the fairness in the way that you have run the subcommittee.

Chairman JOHNSON. Thank you. I appreciate both of you—all of you.

[Applause.]

It has been my pleasure to be in this committee and be with such distinguished members on both sides of the aisle.

And now I would like to thank the witnesses for their valuable time and your testimony—we appreciate you being here—and both the witnesses and members for their participation.

And if there is no further business, the subcommittee stands adjourned. Thank you.

[Whereupon, at 11:41 a.m., the subcommittee was adjourned.]

